



12-1-1970

## Constitutional Reform in North Dakota

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CONSTITUTIONAL REFORM IN NORTH DAKOTA

by  
Darrel J. Alm

A Thesis

Submitted to the Faculty

of the

University of North Dakota

in partial fulfillment of the requirements

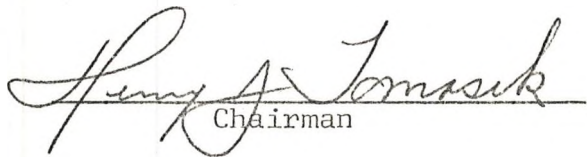
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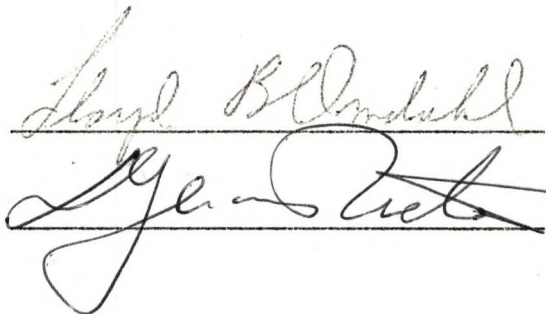
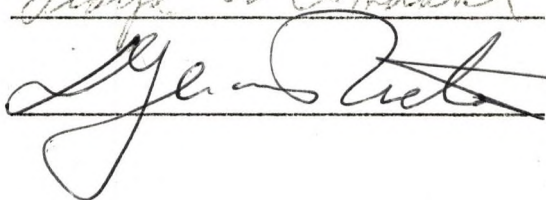
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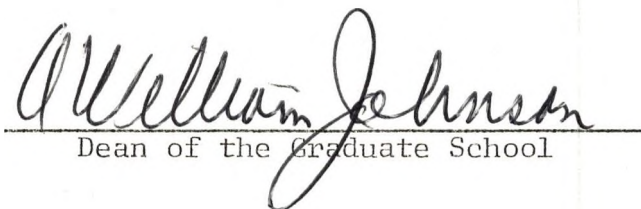
Grand Forks, North Dakota

December  
1970

This thesis submitted by Darrel J. Alm in partial fulfillment of the requirements for the Degree of Master of Arts from the University of North Dakota is hereby approved by the Faculty Advisory Committee under whom the work has been done.

  
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## ACKNOWLEDGEMENTS

The author would like to express his gratitude to the following persons: To Professor Henry J. Tomasek for his assistance and guidance during the course of this study and for helping the author to choose a topic; to Professor Lloyd B. Omdahl, who provided many insights into the problem and helped the writer with style and organization; and to Professor D. Jerome Tweton for serving on my committee and offering suggestions.

I would also like to express my appreciation to Professor Paul H. Blackman for his aid in correcting grammar; to my fellow graduate students, Beatrice Anderson, Don DeMers, Gary Dunn, and Boyd Wright who were a constant source of ideas and comments; and to Mrs. Anne Rowe who typed most of this thesis.

A special note of appreciation to my wife, Sheila, who was a steady source of help and understanding during the course of this study.

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## ABSTRACT

This thesis attempts to show that the constitution of North Dakota, adopted in 1889, is not capable of serving the needs of modern state government.

The debates of the constitutional convention are discussed to show why many of the provisions were incorporated. Proposed constitutional amendments and initiated and referred statutory measures are reviewed to show the type of changes which have been undertaken. The various studies conducted for the purpose of revision are discussed and their recommendations given. The calling of the constitutional convention scheduled for 1972 is also described.

Attempts at revising the constitution of North Dakota have met with limited success. Many of the recommendations set forth by the various study groups are sorely needed to bring the structure and methods of government up to date. The study indicates weaknesses in many sections of the constitution. It concludes by recommending changes in the document to bring it up to date.

## INTRODUCTION

Thirty-seven of the present state constitutions were written before 1900 while only five were adopted in the last twenty years. Constitutional revision is a common problem among most of the states, few can say that they have made significant advances in this area. Age itself is not a governing factor as is demonstrated by the short, but still highly effective, Federal Constitution. State constitutions reflect the times in which they were made and have not been able to adapt, through amendments and statutes, to present situations.

North Dakota's Constitution was written in 1889 and it contains the ideas of the day. The constitution was drafted at a time when there was little demand on the government and the language reflected a distrust of all branches of government. Antebellum administrations were corrupt on all levels and state constitutions were written to protect, through restriction, against corruption and irresponsible government. Most state constitutions still contain these characteristics, they are discussed in a recent publication of the National Municipal League:

1. A cumbersome, unrepresentative legislature, inadequately staffed to perform the lawmaking function intelligently, with excessively restricted powers, often unresponsive to public needs, especially in urban areas, and subject to manipulation by selfish interests.
2. A disintegrated and enfeebled executive with power



widely dispersed and responsibility divided among a large number of elective officials on all levels, and an administrative structure of great complexity featured by duplication, overlapping, inefficiency, and waste.

3. A diffused, complicated and largely uncoordinated judiciary, often lacking independence, with judges selected on a political basis and frequently without professional qualifications on the lower levels.
4. Rigid restrictions on local government that seriously impede home rule.
5. A long ballot listing a bewildering array of candidates and issues and rendering the task of even the most intelligent voter exceedingly difficult.
6. Provisions for amendment and revision so rigid, in some constitutions, as practically to deprive the people of the opportunity to alter their basic law, and, in others, so lax as to encourage too frequent changes.
7. Inclusion of a mass of detail in the constitution, blurring the distinction between constitutional and statutory law, and necessitating frequent amendments.<sup>1</sup>

Change, however, is not always easy for there is always someone who benefits from the existing situation and still others who believe that we must protect against all possible evil actions by man.

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<sup>1</sup>Albert L. Sturm, Thirty Years of State Constitution-Making: 1938-1968 (New York: National Municipal League, 1970), p. 2.

## CHAPTER I

### STEPS TO STATEHOOD AND THE DRAFTING OF THE CONSTITUTION OF NORTH DAKOTA

#### The Beginning of a State

The system of territorial governments in the United States was the method established by Congress to prepare new areas for statehood. These areas were to be admitted as states upon reaching a level of growth to be determined by Congress. The states of North and South Dakota were originally a part of such a territory that was organized in 1861. There were only a few thousand people in Dakota Territory at this time but talk of statehood had already commenced. The first organized attempt came in 1871 when the territorial legislature sent a memorial to Congress asking for the division of the territory into two states. This and subsequent resolutions received little attention.

The 1880's saw renewed interest as the population of the territory increased and the inhabitants were anxious for self-rule. The people of South Dakota viewed the change of the territorial capital from Yankton to Bismarck as a conspiracy because the commission, which was empowered to select a new site for the capital, had been chosen by the legislature with the understanding that the new capital should be located at some central point in what is now South Dakota. This, combined with

corruption in the territorial government and the influence of the railroads, was the spearhead of the real movement for statehood.<sup>1</sup>

Although several constitutional conventions were called in the territory, and one constitution was submitted to Congress for the admission of South Dakota, the obstacles to statehood were many as opposition came from several sources. Many existing states did not wish to grant statehood to such sparsely settled areas. The Democrats controlled at least one house of Congress after 1880 and did not want two Republican states admitted to the Union. Even the appointees of President Grover Cleveland opposed statehood until the area could be converted, through time, from Republican to Democratic states. Investors did not want the control of the states to be in the hands of the debtors. Finally, many railroad men who held key positions in the territory anticipated losing influence with the advent of statehood.<sup>2</sup>

In the late 1880's there were several attempts to admit South Dakota as a state while keeping North Dakota a territory but these attempts failed. As the population of both regions grew, the pressure for making two states was sufficient to warrant attention in Washington. The Republicans adopted the admission of Dakota Territory as two states into their platform in 1888 and on February 22, 1889, both houses of Congress, Democrats and Republicans alike, voted for the admission of North

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<sup>1</sup>Elwyn B. Robinson, History of North Dakota (Lincoln: University of Nebraska Press, 1966), pp. 199-201.

<sup>2</sup>Ibid., pp. 202-3.

Dakota and South Dakota along with Montana and Washington into the Union as equals.

Enabling legislation divided the territory on the seventh standard parallel (the present boundary and an almost natural division agreed upon several years earlier) provided for the election of seventy-five delegates to the state constitutional conventions and authorized these conventions to draw up a constitution--subject to the restrictions of the Enabling Act and approval of the people of the respective states. The Democratic majority in the House of Representatives enacted a provision which limited the people to vote for only two of the three candidates in each district, thus guaranteeing at least one Democrat from each district.<sup>1</sup>

The election was held on May 4, 1889, under blizzard conditions, and the seventy-five delegates were chosen to meet on July 4, 1889, to draft the constitution. The delegates came from a variety of backgrounds, with twenty-nine farmers and twenty-five lawyers representing the largest occupational groups. Thirty-nine of the members came from the Red River Valley region while most of those remaining represented the counties around Bismarck and east to the Red River. Of all the delegates, there were fifty-one Republicans, nineteen Democrats, two Prohibitionists, two Populists, and one Independent.<sup>2</sup>

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<sup>1</sup>Lewis F. Crawford, History of North Dakota (3 vols.; Chicago: American Historical Society, Inc., 1931), p. 323.

<sup>2</sup>Clement A. Lounsberry, Early History of North Dakota; Essential Outlines of American History (Washington, D.C.: Liberty Press, 1919), p. 392.

The convention met at Bismarck and Frederick B. Fancher, President of the Dakota Farmers' Alliance, was elected temporary, and later permanent, chairman. By the eighth of July, the convention was organized and twenty-three standing committees were established. On July 12, 1889, the committee members were named and the first of 140 proposed articles was introduced to the convention. One of the most important proposals was one introduced by Erastus A. Williams, a lawyer from Burleigh County. This proposal, file number 106, was a complete constitution that had been written by Professor James Bradley Thayer of the Harvard Law School at the request of Henry Villard, then chairman of the Board of Directors of the Northern Pacific Railroad. Thayer had the intention of giving the state a good workable constitution and was not influenced in any way by the railroad or other special interests.<sup>1</sup>

It is known that the Thayer Constitution was used by many of the members and committees of the convention when they drafted various articles. The provisions of the Enabling Act were also transcribed into the constitution. The subject of the next section of this chapter will deal with the debates and formation of the constitution of North Dakota.

The Construction of the Constitution  
of North Dakota

While the format of the Constitution of North Dakota is

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<sup>1</sup>Lounsberry, North Dakota, p. 398.

the same as that of the Federal Constitution, the delegates were by no means as brief in the formation of the basic principles that govern this state. There was a fear that the administrations following the convention would be corrupt so the provisions set forth in the constitution explained and defined in great detail the framework of our state government. The delegates were warned by speakers at the convention and by many of their own members not to legislate too much but the words went unheeded where there was any hint at possible corruption.

The Declaration of Rights, Article I, follows a brief preamble and is a twenty-four section statement of the rights of the people of North Dakota. Nineteen of the sections were taken from the Thayer draft but the whole article is modeled after the Bill of Rights and Enabling Act. The length is due to the great number of restrictions that are placed upon government and the inclusion of many rights that are taken for granted in the Bill of Rights. Section twenty-three is the only one that received any significant debate at the convention. This section made it a misdemeanor to maliciously interfere with a person's right to obtain or enjoy employment. It was thought by some that the language was too harsh to permit the normal exchange of information between employers but the majority felt it necessary. This, coupled with section 212, forbidding the exchange of blacklists, provides ample protection for workers in North Dakota. Both sections were adopted in defense of the practices of many corporations and railroads in Dakota Territory.

The forty-four sections comprising Article II, the

Legislative Department, were almost word-for-word from the Thayer draft. The committee saw fit only to change the wording and grammar of a few sections. The article is explicit in its restrictions prohibiting legislators from holding other public office, denied them the right to vote on a matter in which they had a vested personal interest, and provided a method by which legislators may be expelled. One of the more interesting parts of this article is section forty. This section states, in effect, that any legislator who offers to trade his vote on a particular subject for the vote of another on a different subject is guilty of solicitation of bribery. The penalty for such an offer or act is expulsion from the legislature and prosecution in a civil court. This section was enacted with the intention of halting the log-rolling that was characteristic of our National Congress as well as many of the state and territorial governments. While it has failed in its original intent, the presence of such a restriction is a reminder to legislators that flagrant use of the logroll may result in harsh consequences.

One of the proposals that would have greatly altered this article was introduced by Reuben Stevens, a lawyer from Ransom County. Stevens proposed that North Dakota have only a single house legislature and he touched off one of the sharpest debates of the convention. His contention was that the purpose of the United States Senate was to give representation to the independent sovereignties as both senators and representatives would be elected from the same district. In defense of his proposal, Stevens claimed that the constitutional convention, a single

body, was doing more important work than any legislature. He added that two houses of equal power were unnecessary, that Great Britain and Canada had been successfully ruled by a single house, and that the great cities of New York and Chicago, far larger than North Dakota would probably ever be, were adequately ruled by commissions.<sup>1</sup>

Stevens gained some support for his proposal but the majority were not in favor of it. The main argument against the proposal was that two territorial governments had tried, unsuccessfully, to use such a system. In addition to this, it was asserted that the people would never vote for the unicameral because of the fear that a single house's passion, a supposed characteristic of such a system, could only be controlled if the people were to vote on every measure passed.<sup>2</sup>

Sections twenty-nine and thirty-five were the subject of discussion as many were worried that electing senators and representatives from the same district would lead to the one house principle. Others wanted the senatorial districts divided into single member representative districts but the arguments that 700 people in one district would elect one representative and forty-four in another might elect a representative with the same vote, persuaded the convention that the representatives should

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<sup>1</sup>North Dakota, Official Report of the Debates of the First Constitutional Convention of North Dakota (Bismarck: Tribune, State Printers and Binders, 1889), pp. 108-16.

<sup>2</sup>Ibid., pp. 108-16.



be elected at large from within the senatorial districts.<sup>1</sup> The guaranteed ten year apportionment in section thirty-five, coupled with the legislative power to reapportion when necessary, was an effort to appease the Western counties as they had few inhabitants at the time but expected a rapid influx with statehood.

The debates over the pay of legislators, section forty-five, ran from a proposed \$300 a session to \$550. Those members advocating \$300 said that this was adequate for any person to live on while many others wanted to make it a little more worth while so that any person could afford to be a legislator. The former proposal won, however, as the members did not want the people becoming legislators because of the money. The convention settled on the \$5 a day proposal, for a sixty day session, to ensure the presence of the poorer legislators in the case of a special session being called in hopes of forcing the poorer members to give up their votes in the hurry to get home.<sup>2</sup> There is no mention in the debates about letting the legislature fix their own salaries at any time in the future.

There was some discussion of requiring two engrossed copies of all bills to halt the problems of so-called "lost" bills so common to the territorial legislatures. This motion was abandoned, however, because of the additional expense and trouble coupled with the possibility that two bills could be stolen almost as easily as one.

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<sup>1</sup>Debates, pp. 333-9.

<sup>2</sup>Ibid., pp. 339-47.

Article III, the Executive Department, is shorter than Article II but there is still much detail in the provisions. Ten of the thirteen sections were taken from the Thayer draft in idea but the concepts of a few were greatly modified. Sections eighty-two and eighty-three describe the makeup of the executive branch other than the governor and lieutenant governor while in the Thayer constitution the duties of these offices, basically what we have now, plus the offices of a proposed commissioner of public lands and an adjutant general were written out in great detail. There was no mention of any debates over whether or not the governor should appoint some or all of the members of the executive branch.

Section seventy-six of the constitution was changed from the Thayer concept to include that the governor be required to report pardons, reprieves, and commutations to the legislature for concurrence. It also set forth that the legislative assembly had the power to make rules governing all pardons and reprieves. This was done both to limit the powers of the governor in this field and to take the burden of responsibility off the shoulders of one man. Many were worried that the governor could be pressured into doing something, citing cases of such in other states.<sup>1</sup>

Section eighty-four, covering the salaries of public officials, also drew some debate. The figures ran from \$2,500 to \$5,000 proposed for the governor and from \$500 to \$1,000 for

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<sup>1</sup>Debates, pp. 317-20.

the lieutenant governor. Some delegates wanted the salary of the lieutenant governor reduced to the lower sum (\$1,000 had been the original proposal) as he was of little use unless the governor was incapacitated or away from the state. If he were to assume the office of the governor they advocated giving him full pay. The salaries of the governor (\$3,000) and other state officials (\$2,000) were seen as equitable by most members.<sup>1</sup>

Section seventy-two is of interest because it gives the lieutenant governor all the powers of the governor when the chief executive is impeached, disabled, or absent from the state. If the governor were to take a two week vacation in Florida, the lieutenant governor could, technically, change the governor's entire program and makeup of the executive branch. This can be a particular problem when the governor is of one party and the lieutenant governor another.

Another interesting part of Article III is section eighty-one. This section received little attention in the debates of the convention but says, in effect, that the governor is guilty of a crime, punishable by loss of his office, should he threaten to use his veto power or influence to force a legislator into voting a certain way. This, coupled with section forty, was an attempt to halt the collusion between the executive and legislative branches so characteristic of territorial governments. Again, the language is quite clear but serves only as a check upon the excessiveness of such action. Governors have been

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<sup>1</sup>Debates, pp. 320-7.

careful not to threaten use of their veto but have made it known when they have not liked a piece of legislation. The intention of the delegates was to prohibit this too.

Article IV was the subject of much debate at the convention and the result was a lengthy, 35 sections, and highly detailed article on the judicial department. The framers modified many of the proposed sections from the Thayer draft but only about half were drawn from this source.

Section ninety-three of the constitution was the first object of debate and is significant in that the tone of debate also reflects some of the decisions made in accordance with the executive branch. The Thayer constitution called for the election of two supreme court officials, a clerk and a reporter. Mr. Johnson, a lawyer from Nelson County, stated, in support of this section, that the head of the Farmers' Alliance had told him to vote for all the elective officers possible--to keep the control of the government in the hands of the people. In opposition to this, it was contended that the common people knew nothing about the qualifications needed for said offices and that the justices, presuming that the people elected good men, knew what the qualifications should be. The vote was thirty-two to twenty-seven in favor of appointment.<sup>1</sup> These jobs are relatively minor in comparison to those of the executive branch and yet there was significant support for making them elective. It is not surprising that there was no discussion about making some

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<sup>1</sup>Debates, pp. 218-22.

of the offices of the executive branch appointive.

Sections 110 and 111, establishing the county court system, were also the subject of debate. The majority report of the committee called for a system of probate courts while others, advocating the county court system, claimed that the probate system was too expensive for the people to use and had failed in the territory. They also asserted that the county courts would handle probate as well as civil matters, that the cost of litigation and lawyers would be reduced, that the system would support itself financially, and that it would be the court of the common people. A counter-proposal, establishing probate courts with a county court option, to be decided by the people of said counties, failed by a vote of twenty-nine to twenty-eight. The idea of a swift, cheap, and equitable court was pleasing to many of the delegates but there was clearly no mandate on the subject.<sup>1</sup>

Section 103, establishing the jurisdiction of the district courts, was also the subject of considerable debate at the convention. The concern was over whether or not the district courts should be limited to actions in their own districts thus bringing cases to the district where the person being sued resided. Many of the members, based upon past knowledge of the same, were afraid that lawyers living in one district would sue poor people in another district and would end up by confiscating their land simply because the poor had no money with which to

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<sup>1</sup>Debates, pp. 238-40, 294.

hire a lawyer for a court proceeding. The motion was defeated, however, because of the fear that such a restriction would wreak havoc with the judicial system in the state by tying the hands of the court in cases involving two or more districts. The delegates wanted an equitable system but did not want to restrict the powers of the district courts.

Section eighty-eight of the constitution was an attempt to give the larger counties a little more prestige by having the supreme court, traveling to where the problems are, meet in three different places each year. This practice was later changed by amendment but was an attempt to bring the government to the people.

The eight sections contained in Article V, the Elective Franchise, basically guarantee the voter the right to a free, privileged from arrest, and secret vote on election day. It also guarantees citizenship to those in the military and on business for the United States. Only four of the sections were adopted from the Thayer draft, those left out were highly restrictive in nature. The convention left it to the legislature to extend suffrage requirements to other groups, section 122, with voter approval and then extended the vote to women on school matters, section 128. Section 122 could as well have been omitted from the constitution as any change would require a constitutional amendment and this was already understood when the convention adopted the amendment article.

There was some question at the convention as to changing section 106 to make precinct residence requirements thirty

instead of ninety days for the right to vote. Many felt that the ninety day requirement was a hardship upon persons who had resided in the county, with its six months' residence requirement, but who had not been in the precinct very long. The members decided, however, that thirty days was too short a time as people moved around like nomads and did not know the candidates let alone have an interest in the election. There was also the fear that the thirty day residence requirement would lead to election fraud.<sup>1</sup> In addition, there was some mention of whether or not a registration clause should be added to the article to ensure the purity of the ballot. This measure was defeated because it seemed to be an unnecessary and troublesome procedure for any place except the cities.<sup>2</sup>

Article VI, Municipal Corporations, was made up of a single section that outlined the boundaries within which municipalities could borrow money, assess taxes, and contract debts for corporations, such as water works plants. This section was a modification of that contained in the Thayer constitution.

Provisions governing corporations other than municipal were covered in Article VII. Unlike the previous one, this article was lengthy, detailed, and restrictive. Thirteen of the sixteen sections were derived from the Thayer draft. This article seeks to protect the votes of the shareholders of corporation stock, requires registration of foreign corporations and requires

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<sup>1</sup>Debates, pp. 185-91.

<sup>2</sup>Ibid., pp. 207-11.

that they have an office in the state, regulates the issuance of stock, gives the state auditor the power to audit records and books, and provided protection against monopoly.

Section 140, 141, and 142 are those which regulate and govern the railroads. These sections require open books, records of all stock transactions, state auditing if deemed necessary, notice of all mergers, and provide for legislative control and regulation of railroads. Mr. Johnson, a lawyer from Nelson County, expressed the sentiments of the convention when he stated:

We know that these prairies would be uninhabital sic without these roads, but we want just and fair treatment and we want guarantees for the future. People are not afraid of the railroads. It is the monopolies that they are afraid of. This clause section 142 is certain to guard against monopolies.<sup>1</sup>

The six sections of Article VIII, Education, reflect the requirements of the Enabling Act. Four of the provisions were taken from the Thayer constitution. There was little discussion of this except for a committee report governing section 148. The report stated that "it was the intention of the committee who drafted this report that it should be made compulsory on the legislature to begin at the primary and build up to a head--the college."<sup>2</sup>

The disposition of school and public lands was governed by Article IX of the constitution. Only three of the twelve provisions were derived from the Thayer draft and two of these

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<sup>1</sup>Debates, p. 375.

<sup>2</sup>Ibid., p. 153.



were taken directly from the Enabling Act. Section 158, governing the sale of lands, was the main concern of the members of the convention in dealing with this subject. Many wanted the lands to remain the property of the state and to be leased to individuals and corporations. They contended that speculators had gotten rich off the rise in land values and wanted the state to benefit in the future. Real estate would be the safest investment for the money derived from the sale of school lands, so why not keep these lands instead? In opposition, it was shown that the Omnibus Bill provided for the leasing of lands only for five-year periods and that no one would want to lease land for such a time except for pasture. Under the limitation there would not be enough income derived from the use of these lands. This idea prevailed and it was decided to sell these lands in 160 acre plots, to give the smaller farmers a chance. Time contracts were permitted, up to twenty years at 6 per cent interest, with the taxes on said property to start the date of the sale. There was no restriction on the amount of property that any one person or corporation could buy.<sup>1</sup>

Article X, County and Township Organization, is an extremely detailed article. Four of the eight provisions came from the Thayer draft and one of these was out of the Enabling Act. The constitution spelled out the minimum requirements needed to form a new county, made all boundary and county seat changes a question that had to be submitted to the voters, and forbade the legis-

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<sup>1</sup>Debates, pp. 159-60.

lature from removing county seats of organized counties.

There was some discussion over the provisions of section 170, providing for township organization, and it was decided to leave it to the voters to decide whether or not they wanted a township system. The section provided for a government by a board of county commissioners until, if ever, such a system was adopted. Section 172, stating the requirements for the board of county commissioners, and section 170 were put into the article because some locales wanted to be rid of township boards while others wanted to adopt such a system.<sup>1</sup>

Section 173, describing the offices in each county, had originally placed a four year, two term, maximum on all the county offices and this drew comment from some members of the convention. Many delegates thought that two terms was too short as many good men might be forced to leave office. These same members contended that the voters of the counties were best able to decide the number of terms a man served. Others cited cases where county treasurers and sheriffs were returned, almost unopposed, for several successive terms and that after such time it was discovered that they had been helping themselves to county funds. The convention decided that the voters were best able to decide the terms of their county officials but did restrict the county treasurer and sheriff to two terms--thinking that these offices required periodic change

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<sup>1</sup>Debates, p. 446.

to ensure the integrity of the county government.<sup>1</sup>

Article XI, Revenue and Taxation, is also detailed.

Only two of the eight sections were drawn from the Thayer constitution and even these were partially rewritten. Section 174 restricts the yearly levy to four mills on all assessed valuation, thus limiting the power of the legislature to increase revenue by raising the mill levy.

Section 176 exempted church and other property, up to a certain amount, from taxation. It also exempted railroad property, except lands owned by them and used for other than railroad purposes, from the property tax. The delegates knew that the maximum mill levy would have to be levied to get the present income from the railroads so they provided for a gross earnings tax on railroad and corporation earnings. This would permit all young companies time to develop and would tax as they grew. It was equitable to both the state and corporations.<sup>2</sup>

Section 180, providing for a poll tax, was also the subject of debate. Some held that a \$1.50 levy, per adult male head, was unfair as the money would be used to keep up the roads and many people would never use the roads. The convention adopted it anyway because they felt that the floating population should have some responsibility for the government and a day's wages was a fair burden in return for the protection of the state.<sup>3</sup>

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<sup>1</sup>Debates, pp. 442-4.

<sup>2</sup>Ibid., p. 469.

<sup>3</sup>Ibid., p. 475-77.

The six provisions of Article XII, Public Debt and Public Works, were drawn completely different than provided for in the Thayer draft. Section 182, establishing the maximum debt limit of the state, brought immediate attention because of the proposed amount. The original committee report called for a \$100,000 debt limit and some members felt that this was too small. Others added that the immediate debt of the state would be \$500,000 after the transition and wanted restrictions placed in the constitution. The convention decided on \$200,000 as a most liberal sum.

Section 183 governed the amount of debt that could be incurred by any town, county, or school district. This amount was not to exceed 5 per cent of the assessed value of the property therein unless by two-thirds vote of the qualified electors of said subdivision, and then only by 3 per cent more. The remaining four sections explained in detail, the operation of this article.

The operation and organization of the militia, Article XIII, is governed by six sections, taken word-for-word from the Thayer draft. There was no debate over these provisions in the convention but some of the statements warrant attention. Section 191 states that the legislative assembly shall provide for the appointment or election of all officers while section 193 protects the members of the militia from arrest while attending musters, parades, or the elections of officers.

Article XIV, Impeachment and Removal, follows closely the ideas of the Federal Constitution. Five of the eight sections were taken from the Thayer constitution and the other three

were to place more limits and restrictions on impeachment, such as forbidding the lieutenant governor to sit on the court of trial of the governor and prohibiting impeachment twice for the same offense. Section 196, describing the conditions of impeachment, brought some debate at the convention. One member, Ermer Wallace from Steele County, stated: "if a man who is governor of this state gets drunk he should be impeached."<sup>1</sup> This was a rather harsh position and the majority of members did not support such a stand. The words "habitual drunkenness" were meant to mean habitual to the point of not adequately performing his duties. The other conditions, "crimes, corrupt conduct, or malfeasance, or misdemeanor in office," were quite restrictive, however. This article applies only to the governor and judicial officers other than county judges, justices of the peace, and police magistrates.

Article XV covered future amendments and was a single section that received little debate at the convention. It was drawn from the Thayer constitution and provided that all amendments, after passing two successive legislative assemblies, were to be submitted to the people. This required that at least two and one-half years pass before an amendment could be voted upon.

In addition to this provision, the Thayer constitution called for the governor automatically, every seven years, to place the following question on the ballot: "Shall a Convention

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<sup>1</sup>Debates, p. 156.

be called to revise the Constitution?"<sup>1</sup> This provision was subject to debate as there was already an amendment procedure and there was no need to call a convention every seven years. The discussion of this brought up the question of having two successive legislatures approve the amendments but the great expense of a convention swayed the sentiment back to the original proposal.<sup>2</sup>

Article XVI covers the transition from territory to statehood. Throughout, it reflects the provisions and restrictions of the Enabling Act and defines the division of property between the two states. It also provided for the assumption of territorial debts and restrictions governing state control over Federal land and charges.

The catch-all provision of the constitution is Article XVII. This article, labeled Miscellaneous, defines the boundaries of the state, describes the state seal, retains all natural water courses in the name of the state, prohibits children under twelve from working in mines and factories, describes the oath of office, forbids the exchange of black lists, and prohibits the taking of land of a widow to meet her husband's debts when said land was acquired before marriage. Section 208 of this article was enacted to protect the debtors of the state from a fate so common in the territorial days. This provision guarantees that a homestead and reasonable amount of personal

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<sup>1</sup>Debates, p. 497.

<sup>2</sup>Ibid., pp. 497-503.

property shall be exempt from sale in payment of debt. The intention was to guarantee at least livelihood to the debtors of the state. It does not, however, prevent liens on homesteads for labor or materials used in improvement of said homestead.

Article XVIII, Congressional and Legislative Apportionment, provided for the election of United States Senators and Representatives at large and then divided the state into Senatorial and Representative districts to be used as a basis for the state legislative assembly.

The sections providing for the location of Public Institutions, Article XIX, drew the most debate at the convention. The land that was allotted to the state under the Enabling Act was divided among the several institutions. The committee submitted their recommendations, giving almost every major town an institution, and the debate started. Some of the members wanted this article submitted separately to the people to prevent the possibility that the grief brought on by the bickering over the establishment of the public institutions would lead to the rejection of the constitution. Others did not want to start out the state with a record of chicanery, stating that the number of institutions was ridiculous for a state the size of North Dakota. Another group held to the idea that the people would let the legislature know when they wanted an institution established and that this situation was best. Those promoting the article stated that the convention was as competent as any legislature in choosing the places and types of institutions. There was also the remembered practice of some territorial

legislatures changing the site of the capital with every new session. A motion to have the amendments submitted to the people failed by a vote of thirty-one to forty-three and the original amendment was carried by a vote of forth-four to thirty.<sup>1</sup> The majority of the delegates felt that this was as fair a system as any and thus voted for adoption. The article was a logroll that satisfied most members for almost every major town received an institution.

Article XX, Prohibition, was submitted as a separate provision to the constitution because the delegates could see no reason for the inclusion of this article in the constitution unless expressly wanted by the people. The temperance unions were even in favor of submission and the sentiment carried.

The Schedule of the constitution, not an article, was to provide the language necessary for the transition from territory to statehood. It provided that no inconvenience should arise in said transition, spelled out the laws that would remain in effect, provided for the election of officers of the state, and the distribution of records of the territorial government between the two states.

The constitution that was submitted to the people of North Dakota in October of 1889 was the result of forty-five days of work by the convention. The provisions of this constitution were mainly taken from other state constitutions as well as the Enabling Act. Even the Thayer draft represented what were

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<sup>1</sup>Debates, pp. 476-91.



supposed to be the best provisions of other constitutions.

The resulting document contained some of the best provisions of other state constitutions but it also reflected some of the worst. The members of the convention were aware of the corruption in the Dakota territorial government under the Ordway administration, as well as corruption in other territories and states. The result was a document six times as long as the Federal Constitution, laced with restrictions, detail, and diffusion of power. The state government was to be operated by giving a little power to everybody and by making no one accountable to anybody except themselves and the voters. The restrictions placed on the duties and methods of the legislature were also a way to control possible corruption of the men elected by the people.

The people of North Dakota adopted the constitution by a vote of 27,411 to 8,107. The prohibition question was adopted by a vote of 18,552 to 17,393. The only strong opposition to adoption came from those counties that were hostile towards the location of the public institutions. This group, led by the Great Northern Railroad, wanted to move the capital from Bismarck to Grand Forks, away from the Northern Pacific Railroad. There was little opposition to the remaining parts of the constitution.<sup>1</sup>

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<sup>1</sup>Robinson, History of North Dakota, pp. 212-16.

## CHAPTER II

### PROPOSED AMENDMENTS TO THE CONSTITUTION OF NORTH DAKOTA

The constitution of the state of North Dakota lasted four years in its original form. In November of 1894 the people voted for the adoption of an amendment prohibiting lotteries and gift enterprises, one of the 157 proposed amendments to the constitution to date. Ninety-two of the proposals have been added as amendments while the remaining sixty-five met defeat at the polls. The proposed amendments have been classified into fourteen different categories for the purpose of discussion. These categories are: (1) structure of government, (2) initiative and referendum, (3) taxes, (4) elective franchise, (5) county and local government, (6) legislature, (7) legislative salary, (8) bonds, (9) boards and commissions, (10) constitutional convention, (11) public institutions, (12) investment of money from school lands, (13) school and university lands, and (14) miscellaneous.<sup>1</sup>

#### Structure of government

A total of fifteen constitutional amendments altering the

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<sup>1</sup>Lloyd B. Omdahl, ed., Vote of the People (Grand Forks, North Dakota: Bureau of Governmental Affairs, 1968), pp. 6-33.

structure of government in North Dakota have been proposed. The electorate has rejected seven of these measures including some proposals for major governmental reforms.

Seven of the proposed amendments have dealt solely with the judicial branch of government and four of these have been adopted. Three amendments increased the size of the supreme court from three to five, reduced the vote requirement to declare a law unconstitutional from five to four, and increased the terms of the members of the court from six to ten years. The other amendment approved by the voters increased the terms of the district judges from four to six years.

The three proposals that were defeated at the polls included an increase in the terms of supreme court members and two major proposals dealing with the selection process of judges. These two amendments would have removed the selection of judges from the election process and replaced it with a commission-governor (Missouri) system. The voters would then be asked, after a three year period, to rule on the "good behavior" of the judge. These were unsuccessful attempts at upgrading the state's judicial system, they will be discussed more fully in Chapter IV.

Five other proposals dealt with terms of office of state officials, three of which were passed. One amendment made the office of tax commissioner nonpartisan and increased the term from two to four years. Another increased the terms of railroad commissioners from two to six years, with staggered terms; a third removed the two-term limitation from the office of state

treasurer. The two proposals that were defeated provided for four-year terms for all state and county officials and the return of the office of tax commissioner to the party ballot.

Two of the remaining three proposals met defeat at the polls. The voters approved an amendment creating a department of labor but vetoed a proposal calling for complete reorganization of the executive, legislative, and judicial branches of government along with one removing the archaic language from the constitution, especially those sections which governed the transition from territorial status to statehood.

#### Initiative and referendum

The two amendments establishing the initiative and referendum were approved by the voters in 1914. One fixed the power of initiation of statutory measures with the people and provided for referral of statutory measures passed by the legislature. Ten per cent of the voters in the majority of counties were needed to initiate or refer a question to the ballot. The legislature did have the power to first consider all initiated measures. The second amendment provided for the initiation of constitutional amendments (referral was already a part of the constitution) by the people. Twenty-five per cent of the legal voters in the majority of counties were needed to place a proposed amendment on the ballot. If the amendment was approved at the polls it would return to the legislature for consideration. If ratified by the legislature it became law, if defeated by the legislature it would again be placed on the ballot for

voter consideration.

Since the adoption of the initiative and referendum, there have been eight attempts at changing the requirements that govern the operation of the amendments. Only one has passed. The amendment that was approved changed the signature requirement to 10,000 for initiation of a statutory measure, 7,000 for referring a legislative bill, and provided that initiated measures would go directly to the people without passing through the legislature. Those that failed provided for an increase in the number of signatures required for the initiative and referendum.

### Taxes

Twenty-two amendments dealing with the tax question have been submitted to the electorate. These amendments have proposed changes in the four-mill restriction on assessed valuation of taxable property or have expanded the scope of the original constitutional provision. Only ten of the proposed measures were adopted at the polls.

The regulatory measures approved by the voters gave the legislature the power to tax grain in elevators, classify personal property for exemption purposes, set a hail insurance tax to be based upon insured acreage, adopt Federal income tax laws by reference, and assess the property of heat, light, and power companies. Other amendments removed the gross-earnings tax from railroads, dedicated highway-users' taxes to defray the cost of highways, removed aviation-fuel taxes from the highway-users'

tax fund, and set a one-mill state-wide levy to defray the cost of a medical center at the University of North Dakota.

The increased mill levy for the medical center is the only one that has survived the amendment procedure. Two proposals for a veterans rehabilitation fund and two for construction of buildings at institutions of higher learning have met defeat. Five other rejected amendments had to do with a graduated land tax. The first permitted the legislature to classify property for tax purposes, the next two set exemptions up to a certain amount (\$5,000 and \$15,000), while the last two gave the legislature the power to levy a graduated land tax. The other measures that were rejected provided that local districts could tax lands owned by the bank of North Dakota, established a permanent school-equalization fund from the four-mill state-wide property tax, and exempted personal property from taxation.

#### Elective franchise

A total of seven measures have been proposed in this category and five have been approved at the polls. Only one of the adopted measures was a restriction of the voting franchise as provided for in the state constitution. Two of the adopted amendments extended the voting franchise to women and Indians; two others reduced the residence requirements from six months to ninety days in the county, ninety to thirty days in the precinct, and allowed registered voters to vote in their old precinct until qualified in the new. The voters approved an amendment that took the franchise away from persons of foreign

birth who had declared their intention to become citizens of the United States, as was provided for in the state constitution. The electorate defeated the first attempt at extending the vote to women and later refused to lower the voting age from twenty-one to nineteen.

#### County and local government

Thirteen amendments have been proposed in this area and eight have been adopted. Three measures were approved which removed the two-term limitation from the offices of county treasurer and sheriff and increased the terms of most county officials from two to four years. Two amendments consolidated the office of county judge with that of the county clerk in counties with less than 15,000 population. The other amendments gave the legislature the power to provide for municipal home rule, legislate on the position of municipal judge, and make laws for county consolidation with optional county-manager forms of government.

Two defeated measures called for automatic adoption of a county-manager form of government when the population dropped below 8,000 or the assessed land valuation fell below \$2,500,000. Two other rejected proposals provided for the consolidation of the office of county judge with those of register of deeds and clerk of district court while the last defeated amendment reduced to 12,000 the minimum population for having a separate county judge and clerk of the district court.

### Legislature

Five amendments have been proposed that deal with the operation of the legislature or the regulation of its members. Three of these have become law. Those adopted reduced the number of times a bill had to be read from three to two, provided for the terms of legislators to begin on the first Monday in December to allow time for orientation, and prohibited a legislator from accepting state employment during his term in office. The voters twice defeated a measure that would have repealed section thirty-four of the constitution, permitting a legislator to seek a position for which he voted to increase the salary and allowing members to accept state employment during their terms of office.

### Legislative pay

There were eight proposals that sought to change the \$5 a day enumeration paid to state legislators for their services. All seven were defeated at the polls. The voters rejected proposals of \$6 and \$8 a day, two at \$10 a day, \$4 a day expense allowance, \$1,000 a biennium, and an amendment that would have permitted the legislative assembly to set their own salaries. The last measure, 1970, would have established a legislative compensation commission that would have the power to set salaries of legislators.

### Bonds

There has been a total of eleven proposals dealing with the states power to bond itself. Two measures would have raised the bonding limitation of the state, two regulated the issuance



of bonds, and seven permitted bond issues for special purposes.

One amendment to raise the state bond limitation from \$200,000 to \$10 million passed but a later proposal to remove all bonding limitations failed at the polls. An amendment providing for the repayment period of bonds to start from the date of issuance was the proposed regulatory amendment that passed. The voters killed a proposal whereby the bonded indebtedness of the state could be paid off other than by property tax revenue.

Only two of the seven special proposals were defeated by the electorate. Those measures passed gave bonuses to veterans of World War II, Korea, and Viet Nam. Two others gave loans to companies establishing power and generating facilities in the state and permitted counties and cities to issue bonds for utilities. The two amendments rejected at the polls would have issued bonds for construction of state highways and a better financial base for state owned industries.

#### Boards and commissions

There have been four proposed amendments in this area and all have been adopted by the voters. One created a board of pardons, another expanded the authority of the board of equalization to assess all common carriers, a third created a board of higher education to replace the Board of Administration, and the last changed the name of the Board of Railroad Commissioners to the Public Service Commission.

### Constitutional convention

Only two amendments calling a constitutional convention have been proposed. The more recent one was approved while an earlier attempt was rejected at the polls.

### Public institutions

Fourteen amendments have been proposed that deal with the establishment, location, or names of public institutions. Nine of the fourteen proposals have been approved at the polls. Three of the adopted amendments have dealt with the changing of names of public institutions. The deaf and dumb asylum was changed to the school for the deaf and dumb of North Dakota, the state reform school was changed to the state training school, and the North Dakota agriculture college is now the North Dakota state university of agriculture and applied science. The other six approved amendments dealt with location change or creation of public institutions. One separated the state mental institution from the institution of the feeble-minded and designated Grafton as the location of the institution of the feeble-minded. State normal schools were located at Minot and Dickinson, a school for the blind at Bathgate, and a forestry school at Bottineau. Two other amendments provided for an alternate location of the hospital for the mentally ill, to be decided by the legislature, and for the removal of the school for the blind from Bathgate.

Three of the defeated measures were proposed constitutional measures that later passed. The voters rejected proposals for

the establishment of the institution for the feeble-minded, the removal of the blind school, and the changing of the name of the North Dakota agricultural college. The other two measures that failed called the removal of the capital from Bismarck to Jamestown and the establishment of a trade school at Williston.

#### Investment of money from school funds

A total of seven measures authorizing or regulating the investment of school funds have been proposed and six have been adopted. Those approved authorized the investment of money in bonds for the construction of drainage systems, in county and township bonds, farm mortgages, bonds of other states, farmland mortgages insured by the Federal government, and the investment of institutional trust funds. The measure that was defeated empowered the board of university and school lands to settle outstanding claims arising from their investments.

#### School and university lands

The regulation of school and university lands has been the subject of six amendments to the constitution, five of which have passed. Three of the approved measures gave the board of university and school lands the power to nullify contracts for lands when the taxes were not paid, reserved all mineral rights of said lands for the state, and authorized the sale of university and school lands for a number of public purposes. Two other amendments reduced the interest rate on the sale of lands from 6 to 5 per cent and provided for repayment at 6 per cent a year instead of 20 per cent every five years. The defeated

measure had proposed a reduction in the interest rate from 5 to 4 per cent.

### Miscellaneous

Thirty-one of the proposed amendments have been placed in this category because of the subject matter or the number of times of recurrence. Twenty-one of the proposals have been adopted.

Three amendments dealt with betting and lotteries. Two that called for the legalization of certain kinds of betting were defeated while the one prohibiting lotteries was passed. Three amendments provided for the operation of grain elevators in Minnesota, the establishment and operation to terminal elevators in North Dakota, and the operation of businesses by the state, counties, and cities.

Recall of state officials was provided for by one amendment while another calling for the reasons of recall to be stated on the petition was defeated. The legislature was restricted from passing a franchise or special interest as an emergency measure in one amendment but was granted broad powers in case of enemy attack in another. One amendment calling for the submission of proposed constitutional amendments to the electorate after one session of the legislature was approved as was one providing for state reapportionment.

A total of five proposals dealt with the liquor question. An amendment repealing prohibition was passed the second time through while three measures calling for the establishment of

municipal liquor stores all met defeat.

Other adopted amendments provided for state appropriations for construction and maintenance of highways; decreased the interest rates from 5 to 4 per cent on contracts to purchase state lands; separated earmarked funds from general accounts; permitted an agency of the state to take property upon notice to the court even though litigation was not yet concluded; provided that the county superintendent of schools could serve two or more counties; authorized tuition and fees for institutions of higher learning; repealed the requirements that the secretary of state mail every qualified elector a publicity pamphlet; provided that cooperatives could make their own voting rules; eliminated the sixty-day notice that was required before any company issued stock; permitted the state to take over jurisdiction of Indian reservations; and separated the budget of the North Dakota state university experiment station from that of public institutions. Proposals providing for state jurisdiction over Indian reservations and the separation of the budgets of the experiment station and state institutions were defeated the first time through. The voters also rejected an amendment that would have let the legislature provide for the publishing of Supreme Court decisions.

## CHAPTER III

### EARLY ATTEMPTS AT REVISION: THE GOVERNMENT SURVEY

#### COMMISSIONS OF 1931 AND 1941

##### The First Organized Attempt

As a part of his inaugural address of 1929, Governor George F. Shafer spoke of taxation and the high cost of government in North Dakota. He attributed this cost to the increase in price of labor and materials and to the expanded functions of government in the state. The Governor recommended a

comprehensive program of reconstruction and readjustment in our state system of government from top to bottom, on a basis which will include the elimination of unnecessary governmental functions, the consolidation of departments and methods, the curtailment of some, and the elimination of other governmental activities.<sup>1</sup>

To accomplish this task he recommended that an interim legislative committee or a commission be appointed. The legislature took no action on the proposal.

In his 1931 message Governor Shafer again asked for a commission to study the government of North Dakota and make recommendations on how to improve its operation. He asserted: "The aggregate amount of taxes imposed upon the real and personal property by the local subdivisions could be substantially reduced if the entire governmental system from the township to the state

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<sup>1</sup>North Dakota, Governor, Message to the Legislature by Geo. F. Shafer, 1929, pp. 7-8.

was thoroughly and carefully studied, overhauled, and modern business methods adopted."<sup>1</sup>

This recommendation was drawn into a bill and introduced into the House of Representatives in 1931. The measure provided for a five man Governmental Survey Commission to be appointed by the governor; money to hire clerks and secretaries, and \$8 a day plus expenses for the members. The scope of operation and duties of the commission were outlined as follows:

It shall be the duty of the Commission to make a comprehensive survey and investigation of the structure, functions and processes of the entire government of North Dakota, and all municipalities and political subdivisions, including towns, villages and cities, townships, school districts and counties; provided that such survey and investigation shall not extend to either the judicial or legislative branches of the state. . . . It shall be the object and purpose of such survey and investigation to discover ways and means whereby the cost of local and state government may be substantially reduced and greater administrative efficiency introduced into the governmental systems of the state.<sup>2</sup>

The measure, House bill number 184, passed the House by a vote of fifty-seven to fifty-five, and the Senate by a vote of twenty-eight to twenty-one.

The commission submitted their report to the governor on December 1, 1932. It contained recommendations, in eight chapters, in the areas of revenue and taxation, elections, townships, cities and villages, counties, state, elementary and secondary schools, and institutions of higher learning. The individual chapters will be discussed in the following pages.

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<sup>1</sup>North Dakota, Governor, Message to the Legislature by Geo. F. Shafer, 1931, p. 7.

<sup>2</sup>North Dakota, Session Laws, 1931, pp. 363-4.

Revenue and taxation

The commission was extremely concerned with taxes in the state because the population of North Dakota had increased 20.73 per cent between 1910 and 1932 while the per capita tax burden had increased 300 per cent during the same period. The report began by stating: "Public moneys could and should be more properly safeguarded; excessive bond issues and extravagant spending of public funds should be discouraged."<sup>1</sup> One of the main concerns of the committee was to find ways to reduce the property tax burden on the people of the state. Twenty-eight million of the \$34 million collected in 1932 was derived from the property tax and the members felt that some of this revenue could be gained from other sources.

As a part of this reduction, the committee recommended that the gasoline tax be raised from 2 to 5 cents per gallon to entirely cover the cost of highway construction and maintenance. The previous tax had covered only about 61 per cent of this expense and the commission felt that this was inadequate. The members also urged tighter restrictions and licenses for all persons and firms handling fuel.<sup>2</sup>

Another part of the commission's proposal had to do with more efficient operation and collection of the property tax in the interest of economy. The report stated:

There are over 1900 assessors in North Dakota, most of

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<sup>1</sup>North Dakota, Report of the North Dakota Governmental Survey Commission, 1932, p. 9.

<sup>2</sup>Ibid., pp. 12-16.



them inexperienced in property values, yet free to fix values as they choose. Many are incompetent to do the work and merely copy the work of their predecessors, thus perpetuating errors of judgement and often permitting the escape of property from assessment. . . . It becomes, therefore, a matter of guess work sic resulting in inequalities and unfairness as between individuals as well as between taxing units.<sup>1</sup>

The commission recommended that a State Board of Equalization be created to attain a uniform classification of property in the state. Under this board there would be a county assessor system rather than the inadequate township system. The county assessor was to be a well qualified administrator with broad powers. The report also called for county classification of farm lands, a better system of tax abatements, reduced penalties for delinquent taxes, and a new tax sale procedure.<sup>2</sup>

Most of the recommendations of the commission could have been carried out by statutory change. Two sections, providing for a four mill maximum mill levy and establishing the system of assessment, would have required constitutional amendments. The proposed board of equalization could have been created by either statute or amendment.

### Elections

The commission was quite critical in defining the inadequacies of the electoral process in the state. The first comment was on the presidential primary system, the March primary. The members felt that this was too great an expense, \$134,635 in 1931,

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 12-16.

<sup>2</sup>Ibid., pp. 20; 25-8.

to warrant such a system as its only real function was to choose delegates to the national party conventions. The delegates chosen seldom, if ever, reflected the preferences expressed by the voters of the state and commission sought to change the system. The report recommended that the legislature provide another method of election of national convention delegates and party officers, at a cost less than the average of 68 cents a vote in 1932.<sup>1</sup>

In addition, the committee suggested that the voter registration system be changed to eliminate the present registration board. The duties of the board were strictly clerical and the function could easily be transferred to the county auditors' office, reducing the cost. Coupled with this was a recommendation that all election supplies be distributed by mail. The commission found that sheriffs, on a mileage basis, had been making up to \$300 for this service while the cost of using the mails would be as little as \$12.

The initiative and referendum was another subject of criticism by the commission. The report began by stating:

The theory of the initiative has been abused. . . . In many instances, the initiative has been used to bring before the voters matters which had not previously been submitted to the legislature, and often not of sufficient importance to justify the expense involved.<sup>3</sup>

The committee recommended that the publication of initiated and

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 29-30.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., p. 31.

referred measures be reduced and that all initiated measures be first considered by the legislature.

The commission also suggested that many county and city officials be appointed rather than elected, as a money-saving measure. They recommended that the offices of justice of the peace, police magistrate, township and county constable, county coroner, public administrator and county surveyor be appointed. In addition, the board urged four year terms for state and county officers. Increased terms would mean less expense for elections and also more efficiency in office. The commission felt that four-year terms would attract a higher caliber of people and would allow time to do the job rather than force them to campaign immediately. The county sheriff and state and county treasurers were the only officials limited to a single term.<sup>1</sup>

The changes in the initiative and referendum, appointment of minor public officials, and four year terms for state and county officials would have required constitutional amendments. The other revisions could have been accomplished by statutory change.

### Townships

The commission's report on townships revolved around a cost-usefulness factor. They summarized as follows:

The township as organized in North Dakota exists generally in only eleven states in the union. It is rapidly passing out of existence, for it has nothing of importance in gov-

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 32-3.

ernmental functions to recommend its continuance.<sup>1</sup>

The committee felt that the counties could take over the duties of the township; the administration of justice, building of roads and bridges, administration of poor relief, assessment of property, conduct precinct elections, and tax levies. The money saved by such a consolidation would more than warrant the action. Should the legislature decide, however, not to abolish the township, the commission recommended a consolidation of many of the offices and functions in the district.<sup>2</sup>

To abolish townships in the state would require a major change in Article X of the Constitution. The alternative recommendations, however, could have been accomplished by statute.

#### Cities and villages

The main concern of the committee in regards to cities and villages was the taxing power held by two or three separate boards; the city or village assessment board, the school board, and sometimes a park board. The members recommended that a Board of Budget Review be created to oversee all budgets and mill levies of the independent taxing agencies. The board was to have final authority in coordinating the taxing functions to ensure fair levies. In addition, the board would study all bond issues and make recommendations as to whether or not they were needed. Consolidation of offices and functions on the local level was

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 36-7.

<sup>2</sup>Ibid., pp. 35-7.

also recommended as a money saving measure.<sup>1</sup>

The establishment of a board of budget review would have required a constitutional amendment as would the proposed changes in special improvements and the issuance of bonds. The consolidation of offices and functions could have been achieved by statutes.

### Counties

The members of the commission realized that counties were an essential part of the government of the state and wanted this position strengthened. The commission hoped, by county consolidation, that this essential unit could be more efficient at less cost. The commission maintained that small counties paid more in per capita tax and received less than large ones, thus they wanted constitutional machinery to provide for consolidation. The members wanted the minimum population required for the operation of a county raised from 1,000 to 3,000 and suggested that many offices and functions be combined. One of their recommendations provided for the dispersal of duties among county offices to keep the staffs of all offices working full time.

In this manner many employees of the busier offices could be dispensed with. The commission also recommended that mileage and fee collection procedures and regulations be tightened as a cost-reduction measure.<sup>2</sup>

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 38-42.

<sup>2</sup>Ibid., p. 43-5.

The major recommendations in this area, consolidation, would have required further change in Article X of the Constitution. Some revision could have been accomplished by statutes.

### State

The commission's interest in the state was mainly in saving money, rather than changing the branches of government. The rural credits system was the first thing they attacked. Under this system, bonds could be issued for up to one-half the value of first mortgage property. It was designed as a relief measure for distraught farmers but had led to an additional \$38 million state deficit because repayment had not proceeded as planned. Only 6 per cent of the loans were in good standing and the state had been forced to borrow money to pay off the debts as foreclosures were common. Administrative costs were high and the land foreclosed upon was removed from tax rolls. They recommended that the system be abolished as quickly and economically as possible.<sup>1</sup>

Some consolidation of functions on the state level was to be accomplished by several recommendations. The board urged that a state governing commission be established to oversee the investment of all state funds. They wanted all the auditing functions of the state centralized in the state auditing board. The functions of the State Securities Commission were to be transferred to the State Examiner. Duties of the State Publication and Printing Commission were to be expanded to include

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 62-8.

uniform purchase of all state supplies plus the review of printing costs by the various agencies and newspapers engaged by the state. The state licensing department was to be abolished and the licensing power returned to cities and villages. The commission wanted one inspector to complete inspections in many areas and recommended the return of agricultural duties to the Commissioner of Agriculture and Labor. The members also suggested that prison labor be used to plant trees throughout the state.<sup>1</sup>

Abolishment of the rural credits system would have required amendment to Article XII of the Constitution. Consolidation of functions would have required both statutory and constitutional changes.

#### Elementary and secondary schools

The board compiled figures showing that 42-45 per cent of all tax revenue was being spent on education and viewed this figure as being far in excess of what was possible. They recommended that the minimum number of students in a school be raised from four to fifteen, unless local conditions made it necessary for a smaller number, to eliminate 2,116 schools in the state. They also suggested a reduction in the number of school districts to produce a more equal tax burden and thus a lower cost per pupil. In criticism of the system, the commission stated:

A few families residing in a small area may cut themselves off from their neighbors for reasons that have nothing to do with economy, efficiency, or even convenience. It may be, and often is, nothing more than internal dissension and when this is true, the question

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 62-73.

of economy does not come into consideration. . . . So long as the major burden of school support rests upon the local district, there can be neither equality of educational opportunity nor a just equalization of the tax burden.<sup>1</sup>

As a cure for these problems, the committee explored the possibility of a state equalization fund designed to equalize the tax burden between districts. They rejected this, however, because the support would still lie in the local district. The members adopted, instead, a system of "state support with local aid."<sup>2</sup> Many sources were quoted in support of such a plan and they then showed how a statewide mill levy would greatly reduce the present tax burden. The state under this system, would pay about 75 per cent of the cost and would allocate a certain amount per pupil, regardless of the number of schools, to the district. The local units would raise the other 25 per cent to provide any services they wished. The commission hoped that the districts would be forced to consolidate. The advantages of such a system were many. It was more economical, provided for an equalized tax assessment, and still let the districts conduct and administer their own schools. The commission also recommended that a County School Committee be established to handle problems and coordinate functions. This committee would be the central authority.<sup>3</sup>

The Enabling Act required that the legislature establish

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 62-73.

<sup>2</sup>Ibid., p. 77.

<sup>3</sup>Ibid., pp. 77-81.



and maintain a system of public schools. This requirement was transferred to Article VIII of the Constitution and it gives the legislature almost unlimited statutory powers in the field of education.

#### Institutions of higher education

In this matter the commission was critical of the delegates and methods of the constitutional convention. The report states: "Matters of consolidation of units, location in relation to possibilities of utmost capabilities or service, and economic and education factors have been considered of much less importance than questions of political expediency."<sup>1</sup>

The report condemned the expansion of institutions since statehood, the duplication of curricula existing between many of the educational institutions, the selfishness of localities seeking institutions, the lack of expertise on the Board of Administration, plus the fact that North Dakota spent a greater percentage of her total income on education than any other State.<sup>2</sup>

The commission recommended that the educational system be reorganized into what was known as the "Montana System."<sup>3</sup> Under this plan, all educational institutions would be organized under a Greater North Dakota University. The university was to be headed by a chancellor, responsible only to the Board of

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 82-3.

<sup>2</sup>Ibid., pp. 83-6.

<sup>3</sup>Ibid., p. 86.

Administration who would have control over all institutions of higher learning: salaries, promotions, transfers, and curriculum. It was hoped that unnecessary duplication, local selfishness, and cost could be reduced. The commission strongly recommended the adoption of this plan in the goal of an efficient, economical, coordinated, and steadily improved system.<sup>1</sup>

The elimination of the names and locations of public institutions from the constitution would require amendments to Article XIX while the other revisions could have been accomplished by statutory changes.

The commission's report was given to the governor and legislature in 1933 but little was done. North Dakota was deep in a depression at this time and the members of the government had other things on their minds. Near the middle of the 1933 legislative session an emergency measure, repealing the law creating the Governmental Survey Commission, was introduced into the Senate. This bill, number 330, passed the Senate by a vote of forty-eight to zero and the House by eighty-five to one. The work of the commission had thus been put aside.

The only constitutional changes from 1932 to 1942, along the lines of the commission's recommendations, were two amendments providing for county consolidation. One, in 1933, combined the offices of judge and clerk of the district court in counties under 15,000 and the offices of register of deeds, county judge, and clerk of the district court in counties under 6,000. The

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<sup>1</sup>North Dakota, Survey Commission, 1932, pp. 86-91.

second amendment, 1940, authorized the legislature to provide for county consolidation and optional county manager forms of government.

### The Second Attempt, 1941

In his message to the legislature in 1941, Governor John Moses spoke of the financial recovery of the state and urged that many of the problems set aside during the depression be taken up by the legislature. He also stated:

The time has come in North Dakota for the making of a thorough study of our entire governmental structure, state and county, city, township and school district, with the purpose in mind of effecting, through constitutional amendment if necessary, a thorough reorganization of governmental functions in our state. In state government we have much overlapping of authority; in many departments we are doing business today as we did fifty years ago; our local governmental structure is substantially unchanged from the days of statehood. Our entire governmental structure should be carefully examined and touchstone should be: Is it necessary?"<sup>1</sup>

The recommendations of the governor were drafted into a bill that was introduced in the 1941 session of the legislature. This measure, Senate bill 184, established a three-man Governmental Survey Commission consisting of the governor and a member of each house of the state legislature. The members were given secretarial help and \$5 a day plus travel pay. The commission was given broad investigatory powers

to investigate and examine the functions, duties, activities and services of the various state offices, departments

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<sup>1</sup>North Dakota, Message to the Legislature by John Moses, Governor, 1941, pp. 28-9.

institutions, commissions, industries, boards and bureaus of the counties and subdivisions of the state; and to make a comprehensive and constructive study and review of the organization, structure and operation of the entire state government, for the purpose of developing and recommending a program of improvement and economy to include such changes as will serve to simplify and modernize the organization and procedures of the state government and will aid in the securing of the maximum return in public services for each dollar of state expenditure.<sup>1</sup>

The commission was also directed to conduct a study of the auditing and accounting procedures of the state. The bill appropriated \$26,000 to the commission to cover salaries and expenses, it was approved in the Senate by a vote of thirty-two to eleven and in the House by a vote of fifty-eight to forty-six.

The three-man commission--Governor John Moses, State Senator Milton R. Young, and Targie Trydahl, member of the House--sent a representative to other states which had recently conducted governmental surveys and found that these states had hired professional organizations to do the work. The commission, in turn, asked for bids and later accepted one of \$17,000 from the Public Administration Service of Chicago. The Service was late in getting started, due to an attempt to have the measure referred to the people, but finally began in December of 1941. The report was concluded in July of 1942 and the commission then began to prepare it for submission to the legislature in 1943. The members had worked closely with the Public Administration Service and had agreed with most of the recommendations.

In his message to the legislature in 1943, Governor Moses made the following remark about the report of the commission:

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<sup>1</sup>North Dakota, Session Laws, 1941, pp. 322-7.

"It gives us the choice of continuing with the present archaic form of government, with emphasis on confusion and divided responsibility, or of adopting a modern form of government in which the people will be able to fix responsibility for every policy adopted and every public action taken."<sup>1</sup>

The report submitted to the legislature was largely adopted from the recommendations of the Public Administration Service. Chapter I outlines the scope, duties, and methods of the Commission. Chapter II, taken from the Public Administration Service Report, outlined the various state offices, boards, and commissions in the state and recommended a consolidation of these into nineteen departments drawn along functional lines. Chapter III is a discussion, by the commission, of the movement for reorganization of state government, the objections to such a movement and a comment on each of the nineteen departments proposed by the Service. Chapter IV contains the specific recommendations of the commission. Chapter V discusses the economic benefits in reorganization while Chapter VI outlines the need for uniform accounting procedures at all levels of government. Chapter IV is the main concern here because it contains the recommendations of consolidation of duties and functions into nineteen departments in the state and contains the main substance of the commission's report. The discussion of the departments is outlined as follows.

#### Governor

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<sup>1</sup>North Dakota, Message to the Legislature by John Moses, Governor, 1943, pp. 20-1.

The commission recommended the centralization of the powers of the executive branch in the office of the governor. The heads of all state offices except the Secretary of State, State Treasurer, and State Auditor would be appointed by and responsible to the governor and would no longer serve as ex-officio members of boards and commissions. The committee also suggested a constitutional amendment to remove the offices of Commissioner of Insurance, Superintendent of Public Instruction, three Public Service Commissioners, Commissioners of Agriculture and Labor, Attorney General, and State Tax Commissioner from the list of elected officials provided for in the Constitution.<sup>1</sup>

#### Department of Treasury

The director of this department was to be custodian and dispersing officer of all state funds. In addition, he would be relieved of duties on all ex-officio boards and would no longer administer the liquor and oleomargarine taxes.<sup>2</sup>

#### Department of Taxation

The commission recommended this change in name from the State Tax Commissioner and wanted the office appointive for a four-year term. The Director of Taxation would collect all taxes--license, gasoline, liquor, oleomargarine, and highway-- and would serve as the head of the State Board of Equalization,

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<sup>1</sup>North Dakota, Report of the North Dakota Governmental Survey Commission, 1942, pp. 9-10.

<sup>2</sup>Ibid., p. 48.

along with two other members to be appointed by the governor.<sup>1</sup>

#### Department of Finance

The commission advocated the creation of this office to be headed by a director appointed by the governor for a six-year term. The department was to be divided into three divisions. The first part, Division of the Budget, was to replace the State Budget Board. This new office would assume the duties of securing and reviewing budget requests, preparing the budget, constantly studying the plans and requirements of all departments, and comparing revenue with budget requests. The second division, Accounts and Control, was to keep current accounts for all state agencies and provide a central auditing service. This office would replace the State Auditor in conducting these services. The third division, Purchase and Supply, would replace the Board of Administration. This office would uniformly purchase all state supplies, regulate printing costs, operate the capital mail service, and maintain the state capital building. The commission also proposed the consolidation of the State Banking Board and State Securities Commission into the Finance department.<sup>2</sup>

#### Department of Audit

The commission recommended that the head of this department be elected for four years on a non-partisan ballot and that he be concerned only with post-audit. The office was to have

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<sup>1</sup>North Dakota, Survey Commission, 1942, p. 48.

<sup>2</sup>Ibid., pp. 48-50.

separate divisions for state and county auditing and the director was to be relieved of all ex-officio memberships on boards or commissions.<sup>1</sup>

#### Department of Personnel

The board advocated the creation of this department to oversee all state employees. The division would have control over classification and compensation plans, recruitment, training, payroll, and rules. It would consist of three members appointed for six-year terms by the governor. The names were to be chosen from a list supplied by the judicial council.<sup>2</sup>

#### Department of State

The committee recommended the continuance of the Secretary of State as an elected official because he was second in line to succeed the governor. The secretary was to have all his present duties but would only serve on one ex-officio board, the State Board of Canvassers.<sup>3</sup>

#### State Legal Department

This department was derived from the office of attorney general and would have the responsibility only to give legal assistance and service to other departments, agencies, and offices in the state. All licensing functions were to be trans-

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<sup>1</sup>North Dakota, Survey Commission, 1942, pp. 50-1.

<sup>2</sup>Ibid., pp. 51-2.

<sup>3</sup>Ibid., p. 52.



ferred to other departments and the attorney general was to be relieved from acting as a member of any board or commission in the state. The head of this department would be appointed by, and responsible to, the governor.<sup>1</sup>

#### Department of Education

The commission recommended the abolishment of the offices of Superintendent of Public Instruction, State Board of Higher Education, Board of Trustees of the Teachers' Insurance and Retirement Fund, State Library Commission, and Board for the Distribution of the State Equalization Fund. These boards would be replaced by a five-man Department of Education, a policy-making body, and a Director of Education. This director would be appointed by, and responsible to, the governor while the other members would be appointed for seven-year terms.<sup>2</sup>

#### Department of Public Welfare

The commission advocated that this single board be created to administer the entire welfare program of the state. The five members of the board would be appointed by the governor for five-year staggered terms. The operation of the state penitentiary, state training school, and Institution for the Feeble Minded was also to be transferred to this department.<sup>3</sup>

#### Department of Public Health

<sup>1</sup>North Dakota, Survey Commission, 1942, pp. 52-3.

<sup>2</sup>Ibid., pp. 53-4.

<sup>3</sup>Ibid., p. 54.

The commission urged that the Public Health Advisory Council be abolished in favor of a new office. This department would consist of a Public Health Advisory Board, a three-man commission appointed by the governor for six-year overlapping terms, and a Director of Public Health appointed by and responsible to the governor. This department would assume the duties of the State Health Officer, Crippled Children's Commission, State Laboratories Commission and State Food Commissioner. The board would have control over licensing of restaurants, hotels, creameries, and other such public services coupled with regulatory powers over gasoline, paints, and livestock feeds.<sup>1</sup>

#### Department of Agriculture

This department would replace the office of Commissioner of Agriculture and Labor. The new commission would be headed by a director responsible to the governor and a five-man advisory board, representing special agricultural interests, to be appointed by the governor for five-year overlapping terms. All boards and commissions dealing with agriculture would be consolidated under this department.<sup>2</sup>

#### Department of Conservation

This new department of five members and a director, designed along the same lines as the Department of Agriculture, would have control over matters of irrigation, water conservation,

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<sup>1</sup>North Dakota, Survey Commission, 1942, pp. 55-6.

<sup>2</sup>Ibid., p. 56.

and natural resources. The State Water Conservation Commission, Flood Control Commission, Mouse River Valley Authority and River of the North Drainage Commission were to be abolished. The offices of State Geologist, Industrial Commission, and Game and Fish Commissioner were to be transferred to this department.<sup>1</sup>

#### Department of Highways

This department would replace the office of State Highway Commissioner. The director would be appointed by the governor and the functions of the department would be restricted to the planning, designing and construction of roads and bridges.<sup>2</sup>

#### Department of Industrial Relations

This new board would replace the Workmen's Compensation Bureau. A three-member board, appointed by the governor for six-year overlapping terms, would represent labor, business, and the public at large. The director would be directly responsible to the governor. The department would administer and enforce labor laws, settle labor disputes, and administer workmen's compensation.<sup>3</sup>

#### Department of Business Regulation

The commission recommended that the offices of Public Service Commissioner and the Commissioner of Insurance be abolished. A director and three part-time advisory members would

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<sup>1</sup>North Dakota, Survey Commission, 1942, pp. 56-7.

<sup>2</sup>Ibid., p. 57.

<sup>3</sup>Ibid., p. 58.

replace these agencies. Regulatory duties of several past boards and commissions were to be transferred to this department.<sup>1</sup>

#### Department of Business Operation

This department was to be created to advise the governor and managers of each state business on general policy. The five-man commission would be appointed by the governor for five-year overlapping terms. The board would serve on a part-time, per diem basis and would also have control over university and school lands, state hail insurance laws and administration of the state bonding fund.<sup>2</sup>

#### Department of State Safety (State Police)

The commission recommended that the State Highway Commission be replaced by a State Police Organization, with a single director to be appointed by the governor. This organization would have control over the State Highway Patrol, the issuance of drivers' licenses, and maintenance of the Bureau of Criminal Investigation. The department would also maintain a state-wide broadcasting service and would assist in apprehending persons charged with felonies in the state.<sup>3</sup>

#### Department of Military and Veterans Affairs

This department would be headed by the Adjutant General appointed by the governor. In addition to the duties bestowed

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<sup>1</sup>North Dakota, Survey Commission, 1942, pp. 58-9.

<sup>2</sup>Ibid., pp. 59-61.

<sup>3</sup>Ibid., p. 61.

upon the office by the constitution, the director would have control over the Old Soldiers' Home and the office of Veterans' Service Commissioner.<sup>1</sup>

Consolidation of the powers of the executive branch in the governor's office would have required change in Article III of the constitution. The establishment of new departments and functions would also have required amendments. Statutory revision, however, could have effected changes in the functions of many departments and reduced the number of ex-officio boards and commissions. In all, only seven sections and one amendment to the constitution would have been required to effect these revisions. The new language would have left much discretion to the legislature.

Governor Moses wanted the legislature to adopt the report and in support of the provisions he said that he had no intention of ever running for Governor again and added:

The political victor of today may be the loser tomorrow. No one holds a vested right in any office. . . . What we seek is the best way of handling the state's business--the people's business.<sup>2</sup>

Ex-governor George Shafer also recommended that the legislature use the report as a guideline. The legislature, however, was more concerned with World War II and there was no further mention of the report in any of the legislative documents of 1943.

In 1957 the House passed a resolution that instructed the Legislative Research Committee to study the old report and adapt

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<sup>1</sup>North Dakota, Survey Commission, 1942, p. 61.

<sup>2</sup>North Dakota, Governor's Message, 1943, p. 22.

its recommendations to the state as it then stood. The Legislative Research Committee, restricted both in time and staff, concentrated on the fiscal aspect of executive control rather than a complete constitutional change of offices and functions. In 1959 the Department of Accounts and Purchases was created with a director appointed by and responsible to the governor. Through this office passes the budget requests of all departments and the director has the power to allocate funds on a monthly or quarterly basis. The office also acts as a state purchasing agency, bookkeeper, and pre-audit agency. Many of the recommendations of the 1942 survey were incorporated through this method.<sup>1</sup>

The Survey Commission of 1931 was prohibited from studying the legislative and judicial branches of government and the duties of the 1941 Commission also failed to include these areas. In 1963 the Legislative Research Council was instructed to conduct a major study of the North Dakota declaration of rights and the three branches of government. The committee was to make recommendations as to how the government and constitution of North Dakota could be improved. These efforts will be discussed in the next chapter.

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<sup>1</sup>Henry J. Tomasek, "Constitutional Revision in North Dakota," North Dakota Quarterly XXXV (Summer, 1967), p. 83.

## CHAPTER IV

### THE CONSTITUTIONAL STUDY COMMITTEE OF 1963:

#### A FIVE YEAR EFFORT

#### Revision of the Declaration of Rights and the Three Branches of Government

In the 1963 legislative session, both houses approved a measure to continue the study of the Constitution of North Dakota, based on the success of the efforts in 1959. This bill, Senate Resolution "PP", directed "the legislative research committee, with the assistance of outstanding citizens of the state, to conduct a study of the Constitution of the State of North Dakota, and to make its recommendations in regard to the revision thereof, to the Thirty-ninth Legislative Assembly 1965."<sup>1</sup> The committee was given the power to enlist the aid of citizens and appoint subcommittees to study various aspects of the constitution. The non-legislative members were to have no vote on any of the matters settled by the individual subcommittees or the Legislative Research Committee.

The Legislative Research Committee formed a Subcommittee on Constitutional Revision in April of 1963 and appointed Senator William R. Reichert as chairman. At the committee's May meeting, three study groups were established to examine the

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<sup>1</sup>North Dakota, Session Laws, 1963, p. 1075.

various parts of the Constitution. The first group, headed by district Judge Adam Gefreh, was to study the delcaration of rights. Ralph Beede, former state representative, was chosen to head the group studying the legislative branch, while Fred G. Aandahl, former governor and congressman, was chosen to lead the group studying the executive branch. In addition to those mentioned, the committee consisted of Senators Lee F. Brooks, George A. Sinner, Aloys Wartner, Jr.; and Representatives R. Fay Brown, Walter O. Burk, James E. Leahy, Thomas R. Stallman, Jacque Stockman, public members F. W. Greenagel, Frank F. Jestrab, Thomas S. Kleppe, Henry J. Tomasek, and Jerrold Walden.<sup>1</sup>

The proposed method of change of any or all of the sections of the constitution would first consist of the recommendations of the individual study groups to the subcommittee. The subcommittee could approve the recommendations, thus sending them to the Legislative Research Committee, or could reject any or all of the proposals, sending them back to the study group for further consideration. The Legislative Research Committee could reject the recommendations and send them back to the subcommittee for further consideration or it could approve the measures and pass them on to the legislature. The legislature could act on the committee's report in any way it saw fit and enact those measures that it wanted, except in the case of constitutional amendments where

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<sup>1</sup>Tomasek, "Constitutional Revision," pp. 83-4.



subsequent voter approval would be necessary to pass the provisions.<sup>1</sup>

As an introduction to the report, the committee discussed the question of why the constitution should be changed. It made the following remarks about the members of the constitutional convention and the resulting document:

They created a state and local government which could not, in most instances, change to meet the needs of the times. The Constitution continues state and local governmental structures and activities after the need for them has passed. Archaic procedures must be followed long after better ways of doing business have developed. . . . They failed to recognize that a constitution was to be a statement of principles for the protection of the people from their government, and not protect people from one another, which is the purpose of statutes. They also failed to recognize that the constitution should provide only the solid framework to hang the provisions for the state and local government upon, and not to completely create and forever govern them in detail.<sup>2</sup>

The recommendations of the Legislative Research Committee were such as to return the constitution to its position of being a solid framework and to provide for a more efficient and effective state government.

#### Declaration of rights

The committee made little revision in the twenty-four sections comprising the article on the declaration of rights except to eliminate surplus and repetitive language. Many of the sections in this article merely repeated what was already guaranteed by the Bill of Rights. The only major change was

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<sup>1</sup>North Dakota, "Report of the Legislative Research Committee," 1965, p. 10.

<sup>2</sup>North Dakota, "Research Committee," 1965, pp. 14-5.

to section seven. This part guaranteed the right to trial by jury to all and the committee wanted the wording changed to eliminate juries in civil cases unless requested by either party. This change was made to lower the cost and facilitate a faster court procedure without removing the right to trial by jury.<sup>1</sup>

### Legislative sections

One of the major topics taken up by the legislative study group was the initiative and referendum. The new language simply stated: "The legislative assembly shall provide by law for the use of the initiative and the referendum, for the effective date of initiated and referred measures, and for resolving conflicts between such measures."<sup>2</sup> The committee wanted the legislature to be able to amend or repeal all initiated or referred measures by a two-thirds vote, within the first five years of operation, and by a simple majority thereafter. In addition, the study group drafted a companion bill that changed the requirements of the initiative and referendum, amending the law to prevent fraud and misuse that was so prevalent under the old rule. The bill also changed the number of signatures required for both to a percentage system based upon the number of votes cast in the last gubernatorial election. The initiative was to be changed from 10,000 to 8 per cent and the referendum from 7,000 to 5 per cent. Ten thousand and 7,000 may

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<sup>1</sup>North Dakota, "Research Committee," 1965, pp. 14-5.

<sup>2</sup>Ibid., p. 16.

have been equitable in 1914 but were now obsolete.<sup>1</sup>

The study group on the legislature made several other recommendations in regard to these sections. The qualifications for senators and representatives were to be condensed into one section to eliminate much repetitive language. The reapportionment laws were to be amended to conform to the federal court rulings that established the one-man, one-vote principle. Legislators would be able to hold state jobs below the state level. The legislature was to judge the qualifications of its own members. Legislators could be elected or appointed to positions for which they had voted to increase salaries. The legislative-pay provision was to be made statutory. Other laws were recommended that would facilitate the efficient operation of the legislature: it was to meet at the earliest possible date in January and have an organizational meeting in December, both the legislature and governor could call a special session, the legislative session could be extended ten days by joint resolution, only working days were to be included in the sixty-day session restriction, all bills could be read by title only unless a full reading was requested by one member, bills could pertain to several topics, and appropriations bills for existing functions would have to be considered before those pertaining to new functions. The committee also recommended a consolidation and shortening of those sections dealing with the recording of votes, signing of bills, content of bills, and the passing of

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<sup>1</sup>North Dakota, "Research Committee," 1965, p. 17.

special laws. Other miscellaneous sections, not contained in Article II, gave the legislature the power to establish educational institutions, sell state lands, assess and collect taxes, provide for county consolidations, and legislate on the state militia.<sup>1</sup>

#### Executive sections

It is in this area that the committee made the most significant changes. One recommendation was to increase the term of the governor to four years and then limit him to two terms. The lieutenant governor was to be of the same political party as the governor to ensure cooperation between the two positions, permitting the lieutenant governor to carry out the elective mandate should anything happen to the governor. In the case that the governor should leave the state, the lieutenant governor would have only those powers allocated, in writing, by the governor. The chief executive was also given the power of item veto or reduction in all appropriations bills except those dealing with the operation of the legislative assembly.<sup>2</sup>

The main recommendations set forth by the committee in regard to the executive branch dealt with the thirteen elected state offices provided for by the constitution. The committee did not want a complete cabinet system because the legislature did not meet on a continual basis and they felt that there should be some sort of independent check. On the opposite side, the

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<sup>1</sup>North Dakota, "Research Committee," 1965, pp. 18-36.

<sup>2</sup>Ibid., pp. 39-40.

itself the responsibility of studying the judicial branch of government. The commission recommended the formal abolishment of the office of justice of the peace; their powers had already been transferred by statute to the county courts; removed much of the extra language in the constitution that pertained to the judiciary, and proposed that approval of two-thirds of the judges on the supreme court be required to declare a law unconstitutional.<sup>1</sup>

The main recommendation of this study group was the adoption of the "Missouri System" of judicial selection. Under this plan, the governor would select district and supreme court judges from a list of three, for each vacant position, to be supplied by a judicial nominating commission. After a three-year period the electorate would vote on the "good behavior" of each judge by a simple "yes" or "no" vote. After this their records would again be voted upon periodically, every ten years for supreme court judges and every six years for district court judges. The judicial nominating commission would consist of the chief justice of the supreme court, as the chairman; a member of the North Dakota Bar Association from each judicial district, chosen by the association; and citizens, not to be lawyers, to be chosen from each judicial district by the governor, for six-year terms.<sup>2</sup>

The committee pushed for this appointive-elective system

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<sup>1</sup>North Dakota, "Research Committee," 1965, p. 45.

<sup>2</sup>Ibid., pp. 45-6.

people had been holding the governor responsible for actions of other elected officials and the governor did not have the power to carry out the goals of his administration because he did not control the executive branch. The committee recommended that the number of constitutionally elected state officials be reduced from thirteen to six. Two of the seven positions removed, the secretary of state and state auditor, were to remain elective by statute. The secretary of state was to remain so because he was in line to succeed the governor while the state auditor was to act as an external check on all departments. The committee wanted to ensure loyalty to no party but they did not have the time to draft the legislation. The five offices to be appointive were the state treasurer, commissioner of insurance, commissioner of agriculture and labor, tax commissioner, and superintendent of public instruction. All would serve at the pleasure of the governor except the superintendent of public instruction who would be appointed for a four-year term. The governor was also to be given the power to reorganize the offices of the executive branch responsible to him by use of executive orders; unless the legislature, by joint resolution, should disapprove of said reorganization within forty-five days. This was included to give the governor more power to achieve the goals of his administration.<sup>1</sup>

#### Judicial sections

The study group on the declaration of rights took upon

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<sup>1</sup>North Dakota, "Research Committee," 1965, pp. 40-3.

to upgrade the quality of the judges and the judicial system in the state. By taking politics out of the nominating procedure the commission foresaw a higher caliber of judicial candidates since they would no longer be required to run with a party label and have their private lives brought out into the open. The selection committee would also be in a better position to study the qualifications of all nominees and make their choices accordingly. The committee took the position that the electorate knew little about the desired qualifications of a good judge.<sup>1</sup>

In addition, the committee urged that the selection of the chief justice of the supreme court be made by the judicial council made up of all active and retired judges of the supreme court and district courts, the attorney general, one county judge, the dean of the School of Law, and five members of the State Bar Association. The study group felt that this method would have been far better than the system of assigning the duties to the judge with the shortest term, as was the case.<sup>2</sup>

The report of the Legislative Research Committee was introduced as Senate Resolution "A" by Senators Reed Reichert, George Longmire, and George Sinner early in the 1965 legislative session. The bill was read the first time and immediately referred to the committee on State and Federal Government, headed by Senator Elton Ringsak. On February 1, 1965, this committee issued its report on the resolution. The committee recommended a few language

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<sup>1</sup>North Dakota, "Research Committee," 1965, pp. 47-8.

<sup>2</sup>Ibid., pp. 48, 52.

changes in the report plus the deletion of some of the recommendations proposed by the Legislative Research Committee. The report removed the revision of section seventy-four, providing for the election of the governor and lieutenant governor by joint ballot; section eighty-two, reducing the number of elected officials from thirteen to six; section eighty-four, changing the name of the Board of Railroad Commissioners to the Public Service Commission; and section ninety, providing for the "Missouri Plan" of judicial selection. The senate voted forty-six to two to adopt the report.<sup>1</sup> The house made a few minor language changes and proposed a change in the number of state senators and representatives. The language regarding the senators was to be changed from "not to exceed forty-nine" to "at not less than fifty" while the provisions governing the number of representatives was to be changed from "not to exceed ninety-eight" to "at not less than sixty."<sup>2</sup> This change came out of the conference and the report was accepted by both houses, forty-four to three in the senate and ninety-seven to zero in the house.

Although section ninety, regarding judicial selection, was removed from this measure it was introduced as a separate bill, Senate Resolution "PP," later. The measure was referred to the Committee on State and Federal Government where it almost failed. The majority report called for indefinite postponement

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<sup>1</sup>North Dakota, Journal of the Senate, 1965, p. 217.

<sup>2</sup>Ibid., p. 868.



of the resolution while the minority report, later accepted, called for passage of the bill. In the senate as a whole, the vote was thirty to sixteen for passage. The house approved the bill, unchanged, by a vote of sixty to forty-six.

### The public campaign

Approval or rejection of these measures depended upon voter interest and turnout. Past experience had shown that the electorate had to be educated for there to be any chance of enactment. State funds were not appropriated because of the threat of legal action on the part of Bismarck businessmen, Robert McCarney and Harold Schafer. They were members of a Committee to Oppose Constitutional Revision Measures 3 and 4 also composed of Della Erickson, Don Henschel, Dr. John Cartwright, G. O. Amalnd, Matt Schmidt, Mrs. Martin Stenehjem, A. W. Wentz, Gunner Gagnun, and James Sullivan. Murray Baldwin, former Fargo mayor and state legislator, formed a citizens committee to promote the measures but they had limited resources and Baldwin was in ill health. The League of Women Voters and the major newspapers in the state also promoted the proposals.

The Fargo Forum took a positive editorial stance on the subject of measures three and four. In an early editorial the Forum stated that the framers of the constitution reflected the times in which they lived but the constitution was "replete with outmoded ideas and surplus language that often tends to confuse rather than clarify."<sup>1</sup> In later editorials, the paper refuted

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<sup>1</sup>Editorial, Fargo Forum, Oct. 19, 1966, p. 4.

the charges by McCarney, in his many speeches delivered throughout the state, that the people would lose control over the selection of judges. The editor contended that a better quality of judge would emerge because of the improved selection process and probation aspect. The paper asserted that a judge was seldom opposed after elected to his position and there was no guarantee that the person would be qualified for the office.<sup>1</sup>

The editor supported the revision of the laws on the initiative and referendum because of the fraud that had resulted in many past elections and the contention that there should be a method of changing initiated and referred measures after a period of time. The paper also supported the removal of superfluous language from the declaration of rights, the December organization of the legislature, and the general streamlining of the legislative and executive branches of government.<sup>2</sup>

The Forum printed three articles discussing the opposition by McCarney and others to the proposed measures. McCarney claimed that the governor would have too much power over judicial appointments; the constitutional measures were hastily and improperly drawn; small counties would be taken over by the larger ones under the county consolidation provisions; the probation plan of judges was the system used in Russia; signature require-

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<sup>1</sup>Editorial, Fargo Forum, Oct. 23, 1966, p. 4; Oct. 24, p. 4; Oct. 28, 1966, p. 4; Oct. 31, 1966, p. 4; Nov. 2, 1966, p. 4; Nov. 7, 1966, p. 4.

<sup>2</sup>Ibid., Oct. 23, 1966, p. 4; Oct. 25, 1966, p. 4; Oct. 26, 1966, p. 4; Oct. 27, 1966, p. 4; Oct. 28, 1966, p. 4.

ments on the initiative and referendum were unrealistic; the legislature would abuse the power to establish their own pay schedules; and that the printing mistakes on the ballots caused a change in the meaning of the measures. Overall, McCarney asserted that the committee did not do a complete enough job.<sup>1</sup> Harold Schafer had a full-page ad in the Forum outlining many of these same reasons for voting against the measures.<sup>2</sup>

The Grand Forks Herald, in an editorial, supported the actions of the Legislative Research Committee and the state legislature. The Herald admitted that there were some faults in the provisions but believed the overall effect was good because the provisions tried to bring about an improvement in the government of North Dakota.<sup>3</sup> In an earlier editorial the Herald stated that there were "some die-hard conservatives sounding almost like the Red Chinese in their denunciations of the revisionists."<sup>4</sup>

The paper published two informational articles on the measures and recommended their adoption. The articles, taken from pamphlets of the League of Women Voters, stressed modernization and efficiency.<sup>5</sup> An Associated Press article explained

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<sup>1</sup>Editorials, Fargo Forum, Oct. 4, 1966, p. 11; Oct. 21, 1966, p. 3.

<sup>2</sup>Ibid., Nov. 6, 1966, p. 16.

<sup>3</sup>Editorial, Grand Forks Herald, Nov. 3, 1966, p. 4.

<sup>4</sup>Ibid., Sept. 1, 1966, p. 3.

<sup>5</sup>Ibid., Oct. 16, 1966, p. 36; Oct. 28, 1966, p. 12.

the measures as they stood and another explained the support and opposition to the proposals.<sup>1</sup>

One letter to the editor by Robert E. Dahl of Grafton, past president of the State Bar Association, stated that the people who worked on the revision were "neither Fascist nor Communist, ultra-liberal nor ultra-conservative. They are people like you and me who have done us a public service by their work."<sup>2</sup> Another letter by Mary E. Farr, also of Grafton, spoke of the loss of the right of the people of North Dakota to elect their public officials and turn the state over to crooks, should the measure pass.<sup>3</sup> Harold Schafer also put a full-page ad in the Herald.

The Minot Daily News supported the measures with editorial comment but not to any great extent. The paper endorsed the work of the committee and legislature and urged a "yes" vote even though the language was long and complicated. The News refuted the attacks by McCarney that the printing mistakes on the ballots changed the content of the measures and that this emphasized the poor construction of the measures as a whole. There was one informational advertisement and recommendation paid for by the League of Women Voters.<sup>4</sup>

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<sup>1</sup>Editorials, Grand Forks Herald, Oct. 20, 1966, p. 13; Oct. 21, 1966, p. 16.

<sup>2</sup>Ibid., Nov. 3, 1966, p. 8.

<sup>3</sup>Ibid., Oct. 16, 1966, p. 30.

<sup>4</sup>Editorials, Minot Daily News, Oct. 8, 1966, p. 5; Oct. 28, 1966, p. 4; Oct. 31, 1966, p. 16; and Nov. 5, 1966, p. 5.

The Bismarck Tribune did not take a positive position regarding the proposed measures. Three informational editorials,<sup>1</sup> simply explaining the measures, were printed along with one entitled "The Reluctance to Change," the closest thing the Tribune did to taking a stand on the issues. The editorial stated: "Unfortunately, the attacks on the amendments pinpointing every possible flaw and some which are wholly fictitious, is not being countered by an effective campaign in favor of the amendments."<sup>2</sup> The Tribune also printed the content of two of McCarney's speeches and a letter from the League of Women Voters. An advertisement by the Citizens Judicial Conference--judges, lawyers, and citizens--endorsed the measure on the judiciary while an ad by Harold Schafer repeated the statements that appeared in the Grand Forks Herald and Fargo Fourm.<sup>3</sup>

Both resolutions were submitted to the electorate at the general election of November 1966. The judicial selection proposal failed with 73,231 votes for and 82,644 against and the constitutional revision question lost by the vote of 69,116 for to 84,131 against.

The people of North Dakota had thus rejected the efforts of the Legislative Research Committee and state legislature to revise the state constitution.

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<sup>1</sup>Editorials, Bismarck Tribune, Oct. 21, 1966, p. 3; Nov. 1, 1966, p. 4; and Nov. 7, 1966, p. 4.

<sup>2</sup>Ibid., Nov. 4, 1966, p. 4.

<sup>3</sup>Ibid., Nov. 3, 1966, p. 7, 9.

Revision of the Remaining Sections,  
A Continuation of the Study

In 1967, after the report of the Subcommittee on Constitutional Revision, the Legislative Research Committee decided to extend the study to cover the remainder of the constitution. A new subcommittee was organized to conduct this research and consisted of "Senators William R. Reicher, Chairman, George A. Sinner; Representatives R. Fay Brown, Walter O. Burk, Herbert L. Meschke, Jacque Stockman, George M. Unruh, John S. Whittlesey; Public Members Ralph Beede, Adam Gefreh, F. W. Greenagel, Harold R. Hofstrand, Frank Jestrab, Thomas S. Kleppe, Henry J. Tomasek, Jerrold Walden, Aloys Wartner, Jr., and Frank A. Wesntrom."<sup>1</sup> The methods of recommendation and change were the same as that of the 1965 study.

Voting franchise

Recommendations made in this area were in an effort to remove language that tied the article to the nineteenth century. The legislature was to be given the power to establish and change residence requirements. Qualified voters were to be allowed to vote in their old precincts until qualified in the new. The committee recommended that section 122, providing that all extensions of the franchise be approved at the polls, be repealed. The committee also advocated the updating of provisions governing arrest on the way to the polls, election dates, the right of

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<sup>1</sup>North Dakota, "Report of the Legislative Research Committee," 1967, p. 11.

women to vote, and a consolidation of much repetitive and unnecessary language.<sup>1</sup>

#### Municipal corporations

The committee recommended the change of one word in section 130 to increase the powers of home rule. The legislature would no longer "restrict" the powers of the cities and other political subdivisions. It would now "specify" these powers.<sup>2</sup>

#### Corporations other than municipal

The committee wanted most of the sections in this article repealed and replaced by statutes. The sections providing for the election of corporate directors by the shareholders, the regulation of foreign corporations, the extend of corporate powers, and the restrictions governing fictitious stock were to be repealed. Railroads were to be treated like other corporations and sections 141, 142, and 143, regulating railroads, were to be repealed as they had been replaced by federal laws. Section 144, defining a corporation, was not needed in the constitution and was to be repealed. The committee also recommended the repeal of sections 145, providing for the issuance of state bank-notes, and 146, prohibiting combines and price fixing, because the subjects were covered by federal laws and state statutes. In addition, the committee recommended the deletion of language governing the transition from territorial status

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<sup>1</sup>North Dakota, "Research Committee," 1967, pp. 19-20.

<sup>2</sup>Ibid., pp. 20-1.

to statehood.<sup>1</sup>

### Education

The committee urged that section 151 of the constitution be repealed. This section stated that the legislature "should" take steps to prevent illiteracy and promote scientific improvements. The committee felt this language to be superfluous and more adequately covered elsewhere in the constitution.<sup>2</sup>

### School and public lands

The committee made several recommendations regarding institutional trust funds and the operation of the common school fund. Under the old provisions of section 153 the legislature would be responsible for any money lost, through investment, from the institutional trust fund. The new language changed this situation and put all trust funds in a common school fund for investment purposes. Section 155 was amended to place the revenue from the sale of school and public lands in the common school fund. The committee also recommended the removal of many sections that were not worthy of constitutional recognition: one providing for a county board of appraisers for school lands, another detailing the rules of appraisal of school lands, three more that governed the sale and lease of these lands, and one defining the type of investments that school funds could be used for. In addition, the board urged consolidation of many

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<sup>1</sup>North Dakota, "Research Committee," 1967, pp. 20-1.

<sup>2</sup>Ibid., p. 21.



obsolete and transitory sections.<sup>1</sup>

#### County and township organization

Section 168, establishing the original counties of North Dakota, was the first item that the committee wanted to repeal in this category. The legislature was to be given the power to provide for optional forms of county government, with local voter approval, and to provide for continuity in government should a subdivision decide to change.<sup>2</sup>

#### Revenue and taxation

The committee recommended the revision of section 176 of the constitution to remove many of the restrictions on the legislature in the field of taxation. The legislature was to have the power to tax all property, including federal and state, if it was used for profit-making purposes. Section 174, providing for taxation of railroads was to be expanded to cover all public utilities. The language of the article was also revised and consolidated.<sup>3</sup>

#### Public debt and public works

The committee recommended a change in section 185 to give political subdivisions more power to engage in business operations both on an individual and joint basis. Section 186 was to be revised to give the legislature more control over appro-

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<sup>1</sup>North Dakota, "Research Committee," 1967, pp. 24-5.

<sup>2</sup>Ibid., pp. 24-5.

<sup>3</sup>Ibid., pp. 25-6.

priations by requiring that all money spent, except that from state-owned businesses and trust funds, be by appropriation. The section requiring that the state auditor sign all bond issues was to be replaced by statutes. A new section giving the political subdivisions an expanded power to issue revenue bonds was designed to increase the efficiency at the local level and also lower the interest rate on bonds by increasing the number of ways in which money could be raised to repay the debt. The committee also wanted the two sections providing for World War II and Korean veterans benefits repealed because they had been executed and were now obsolete.<sup>1</sup>

#### Amending constitution

The committee advocated a change in the number of signatures required to initiate a constitutional amendment. The original amendment called for 20,000 signatures and the committee felt that this figure, established in 1914, did not adequately reflect population changes. The new law would require that signatures totaling 5 per cent of the population of North Dakota be required to initiate a change. A constitutional convention could be called either by initiative petition or legislative action.<sup>2</sup>

#### Recall provisions

The committee wanted article thirty-three of the amendments revised to provide for the recall of county commissioners

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<sup>1</sup>North Dakota, "Research Committee," 1967, pp. 26-8.

<sup>2</sup>Ibid., pp. 28-9.

under the same conditions and procedures as other state offices.<sup>1</sup>

#### Miscellaneous provisions

The report recommended the repeal of section 209, prohibiting labor by children twelve years and under, because it permitted the use of thirteen-year-olds. The regulation of child labor would be better handled by statute. Another section, 214, provided for the original apportionment of senators and representatives and was now obsolete.<sup>2</sup>

#### Public institutions

The committee's only recommendation in regard to this article was to shorten the language in many of the sections establishing state institutions and condensing the requirements regarding the formation and location of the same.<sup>3</sup>

#### Board of Higher Education

The detail governing the operation and duties of the board of higher education in article fifty-four of the amendments was to be replaced by statutes. The new section would merely establish the powers and duties of the board and give the legislature the power to pass laws in regard to those duties.<sup>4</sup>

#### Dedicated gasoline taxes

The committee recommended that article fifty-six of the

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<sup>1</sup>North Dakota, "Research Committee," 1967, p. 29.

<sup>2</sup>Ibid., pp. 29-30.

<sup>3</sup>Ibid., pp. 31-3.

<sup>4</sup>Ibid., pp. 31-3.

amendments be changed to exclude use of aircraft fuel taxes in the construction and maintenance of highways.<sup>1</sup>

### Schedule

The committee wanted the twenty-six sections governing the transition from territory to statehood repealed because they were obsolete.<sup>2</sup>

### Miscellaneous recommendation

The committee, at the request of the Judicial Survey Commission of the State Bar Association, again considered the matter of selection of the chief justice of the Supreme Court. As it then stood, the chief justice was the judge with the shortest term. Since one justice was elected every two years the office would also change. The committee wanted the chief justice to serve for a ten-year period to give substance to the office and to make it more effective.<sup>3</sup>

### The public campaign

The committee's report was introduced as House Concurrent Resolution "A" by Representatives Brown and Unruh, at the beginning of the 1966 session. There was little change in the recommendations and the measure passed, sixty-three to thirty in the House and thirty-four to thirteen in the Senate. This measure did not draw the attention that the other constitutional revision

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<sup>1</sup>North Dakota, "Research Committee," 1967, p. 33.

<sup>2</sup>Ibid., pp. 33-5.

<sup>3</sup>Ibid., p. 35.

proposals had commanded but there was still significant opposition, from other sources. The Fargo Forum endorsed the revision measure but also stated objections to the provision governing the board of education. The board's powers, under the new language, would be established by the legislature instead of the constitution. There was some question as to whether or not this was a favorable situation.<sup>1</sup> In a later editorial the Forum endorsed the measure because the powers had been established by an initiative amendment to counter the dictatorial powers of Governor William Langer over the board of education. The paper was confident that this type of politics would not return to the state. The Forum did, however, state the following: "Because of the tremendous "vote no" campaign against the corporate farming measure and the lack of enthusiasm for the horseracing measure, we do suspect that the "no" vote will be predominant in Tuesday's election and possibly carry the proposed constitutional changes down with the other two measures."<sup>2</sup>

The Grand Forks Herald published one informational article on the measures and then started reporting on the objections to placing the board of education under the legislature. The paper published one article entitled: "82 Faculty Members Appeal for Constitutional Amendment Rejection."<sup>3</sup> The people

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<sup>1</sup>Editorial, Fargo Forum, Nov. 1, 1968, p. 4.

<sup>2</sup>Ibid., Nov. 3, 1968, p. C-4.

<sup>3</sup>Editorial, Grand Forks Herald, Nov. 1, 1968, p. 10.

signing this petition felt that it was "dangerous" to give the legislature power to govern the colleges and state universities. In another editorial, the Herald asserted that the "vote no" campaign on the farm incorporation measure might carry over to the constitutional measures as both were entitled "measure number 1," one statutory and one constitutional. The paper also explained some of the objections to the constitutional measure: the allocation of school funds only on the basis of the number of children attending school, the changed signature requirements for the initiative, and legislative control of the board of education.<sup>1</sup> George Unruh defended the proposed change by asserting that the power of the legislature would not be significantly changed. The legislature now had control over the board's actions by its power of review and allocation of public funds, with some forty million dollars going to education.<sup>2</sup>

The Minot Daily News printed informational articles and endorsed revision except for the language pertaining to the board of education, about which it had doubts.<sup>3</sup> The Bismarck Tribune printed two informational articles on the proposed changes.<sup>4</sup>

At the general election on November 5, 1968, the constitutional revision measure was defeated by a vote of 82,000 for to

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<sup>1</sup>Editorial, Grand Forks Herald, Nov. 2, 1968, p. 10.

<sup>2</sup>Ibid., Nov. 3, 1968, p. 9.

<sup>3</sup>Editorials, Minot Daily News, Oct. 29, 1968, p. 14; Nov. 2, 1968, p. 4.

<sup>4</sup>Editorials, Bismarck Tribune, Nov. 1, 1968, p. 4; Nov. 3, 1968, p. 4.

116,813 against. Two measures repeated from the 1967 campaign, the "Missouri Plan" and December meeting of the legislature, had been voted on at the primary election in September of 1968. The judicial selection amendment failed by a vote of 45,926 for to 58,280 against while the December organizational meeting of the legislature was approved by the vote of 64,727 in favor to 41,675 opposed.

## CHAPTER V

### THE NORTH DAKOTA CONSTITUTIONAL CONVENTION

In the 1969 legislative session Representative William Kelsch, Chairman of the House Judiciary Committee, introduced a bill calling a constitutional convention. This measure, House Concurrent Resolution 16, would place the question, in the form of a constitutional amendment, on the ballot for voter consideration. If the amendment was adopted delegates would be chosen, under a companion bill passed by the legislature, to sit at the convention. The amendment was approved by the electorate at the September 1970 primary, 56,734 to 40,094, and House Bill 485 then went into effect.

Under this bill, Governor William Guy, Lieutenant-Governor Richard Larsen, and Attorney-General Helge Johanneson were to select ninety-eight delegates, by unanimous vote, to run in an election. Delegates would be nominated according to the number of state representatives from each legislative district. Interested people who were not nominated could petition to have their names placed on the ballot. The delegates were chosen at the general election of November 4, 1970. Seventy-eight of those chosen had been nominated while the other twenty were elected from the 141 candidates who



petitioned for a place on the ballot.<sup>1</sup>

The delegates will meet on April 6, 1971, for a three-day organizational meeting and will convene on January 3, 1972, in convention. Delegates will be paid \$25 a day, plus expenses, for the thirty-day session. The convention will decide all questions by majority vote. The resulting measures may be submitted in whole or parts to the people of North Dakota, without first passing through the legislature. Under the 1969 law, the governor must submit a budget to the 1971 legislature to cover the cost of the convention plus provide for funds to publish and distribute information on the convention proposals. A special election will be called after the adjournment of the convention, after ninety but before 120 days, to decide on the issues. The majority of the votes shall decide each question.<sup>2</sup>

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<sup>1</sup>Lloyd B. Omdahl, Major Attempts at Constitutional Revision, 1960-1970; North Dakota Proposes Convention (Grand Forks, North Dakota: Bureau of Governmental Affairs, 1970), pp. 1-2.

<sup>2</sup>Ibid., pp. 2-3.

## CHAPTER VI

### CRITICISMS AND RECOMMENDATIONS

North Dakota will soon be embarking on its fifth major attempt of revision of the state constitution. The first four tries were failures for various reasons but there is hope for the constitutional convention which convenes in January of 1972. The purpose of this chapter is to discuss and evaluate the constitution as it now stands and make recommendations toward improving it.

#### Declaration of rights

The recommendations set forth by the Legislative Research Committee in 1965 were adequate to bring this article up to date. The shortened language did not remove any basic rights nor did the proposed change in the requirements for juries in civil cases.

#### Legislative sections

The initiative and referendum are two items that must be changed. The provisions permit too easy an access to the constitution and statutory laws of North Dakota. Small interest groups, by obtaining a minimum number of signatures, can gain access to the ballot. The legislature should be able, within limits, to amend and repeal initiated and referred measures as times and circumstances change. The proposed changes in the

signature requirements and legislative control of the procedures are needed reforms.

The five amendments changing legislative rules and procedures that have been submitted to the people should not have reached that point. The legislative assembly should have the power to establish the length of sessions, decide how bills should be read, and even determine the conduct of its own members. The two readings of bills required by the constitution is violated today, by simultaneous reading of several persons, because of the time element. Legislators are still informed to the extent they want to be. Stopping the clock is also a frequent tactic to extend the legislative session beyond the sixty-day limit, to complete the work. The position of legislator is not all that prestigious nor is it a full time job. The decision as to whether or not a man can accept other state employment while serving as a legislator should be made by the legislative assembly and not the ever-distrustful public.

The seven amendments that proposed changes in the pay of legislators should not have had to be voted upon. The delegates at the constitutional convention should never have been so shortsighted as to freeze the pay of legislators at \$5 a day. Any attempt at an increase, even \$1 a day, has brought cries of anguish from those opposed and has led to the defeat of all measures. This situation has led to the ignoring of the particular constitutional provision and the legislators vote themselves a \$35 a day expense allowance in addition to the \$5 salary. Even at \$40 a day most legislators lose money for the session.

If the legislators had the power to set their own salary we may be assured that it would be used wisely. Few people become legislators because of the pay and most would be worried that it might haunt them at election time should they get carried away. Part of the problem of the lack of efficient state government is that the salaries are not sufficient to attract the best men. The legislative compensation commission, voted down in the 1970 general election, would also have been an adequate method of setting legislative salaries.

The recommendations made by the Legislative Research Committee in 1965 proposed many changes in the legislative branch to make it a more efficient and viable branch of government. The new language would give the legislature room in which to work rather than restrict and hinder it.

#### Executive department

The recommendations of the Legislative Research Committee are also necessary to make this branch effective. The governor should have control over his branch to carry out the goals of his administration. There would still be significant, outside, checks upon his actions. Fragmentation of the power of the executive branch has and will lead to deadlocked and inefficient government.

The only significant change in the executive department, since 1959, is the adoption of four-year terms for most state officials.

### Judicial department

The "Missouri Plan" of judicial selection has been defeated twice at the polls but is sorely needed to improve the judicial system of the state. Judges are seldom opposed after their first election and they run with a party label rather than on their records. Voters know little about the desired qualifications of a good judge.

In 1965 the legislature enacted a measure increasing the term of chief justice of the supreme court from two to five years. Instead of appointment by a judicial council the chief justice is appointed by the judges of the supreme and district courts.

### Elective franchise

The changes proposed by the Legislative Research Committee in 1967 would have updated this article. Only two of the seven proposed amendments, extending the vote to women and lowering the voting age, should have gone through an amendment procedure. The legislature should be given the power to make the rules governing a basic statement. Residence requirements, election dates, arrest on the way to the polls, and other such questions are better left to the legislature.

### Municipal corporations

The language increasing the powers of municipal corporations is a needed change to establish "home rule" powers in political subdivisions. The legislature should not be hampered in providing powers for political subdivisions.

Corporations other than municipal

The members of the constitutional convention wrote severe corporate restrictions into the constitution because of common corporate practices in the territories. Much of this language is now obsolete because of federal law and most of the rest is better handled by statutes. It is foolish to have constitutional provisions that provide for the regulation of foreign corporations or the election of corporation managers by the shareholders.

Education

The transitory language in this article should be removed as should the superfluous and vague language. The legislature must have the power to provide for universal education rather than working within words such as "should take steps to provide."

School and public lands

Thirteen amendments have been proposed that would have changed the constitutional requirements in this area. Seven amendments affected investment of school funds and all seven could have been more adequately handled by the legislature. There is nothing in these measures to warrant the time and expense of placing them on the ballot for voter approval. The legislature should have the power to administer the investment of these funds.

Six other measures provided for the regulation of school and university lands. Again, the content of these proposals was such that voter participation was an unnecessary step. These measures are statutory in nature and should have been

handled by the legislature. Few people are interested in how these lands are administered. Legislators are chosen to make the laws that govern the state and its agencies and this is clearly a field that falls within these powers. The recommendations made by the Legislative Research Committee would have accomplished much of this and brought the language of the articles up to date. The article is over-protective and restrictive.

#### County and township organization

The Legislative Research Committee proposed giving the legislature power to provide for optional forms of county government, with voter approval, and to establish interim forms of government. This legislation is needed but the report did not go far enough. Several amendments have been proposed that provided for county consolidation and terms of county officials. The counties are creatures of the state and the legislative assembly should have control over them. The legislature should have the power to make laws concerning consolidation of offices and functions, extending the terms of officials, or providing for optional forms of government. Having the people vote on such amendments detracts from the perspective of state government because factors like local pride and fear are always interjected. There are always a few officials who would lose out in a consolidation and these few create, through letters and speeches, a distrust of the proposal. The voters, few of whom are genuinely interested, cast negative ballots simply because it is safe. Voter participation in such matters hinders the operation of

state and local government and must be changed to support the goal of efficiency at all levels.

#### Revenue and taxation

The recommendations of the Legislative Research Committee to remove most of the restrictions on the legislature in this area were long overdue. Twenty-two amendments have been proposed. It is absurd to ask the people of the state to vote on whether or not the revenue from aviation fuel taxes should be separate from the highway-users' tax fund or allow the state legislature to adopt federal income-tax laws by reference. Public interest in the tax field is a defensive one. The people should not be directly asked to establish and administer the tax system of North Dakota by voting on every proposal. The legislature is able to handle these questions both in structure and staff and the power must be given to that body. Legislators do not want higher taxes for the same reasons as everyone else but they have the responsibility of raising sufficient revenue for the operation of the state.

#### Public debt and public works

The proposed changes in this article, recommended in 1967, would update the language and give political subdivisions more power to issue bonds. Other needed revisions would replace constitutional provisions with statutes and give the legislature more power.

#### Constitutional Convention

There was a consideration of such a provision at the



constitutional convention and it should have been written into the constitution. The methods of amendment now available are inadequate to meet the expanded needs of the state. A simple provision permitting the legislature to call a convention and providing for the selection of delegates would be sufficient.

#### Miscellaneous articles

Article XIII, Militia, is no longer pertinent and should be repealed. Article XV, Future Amendments, should be revised to eliminate popular approval as a step in the amendatory process. Article XVI, Compact with the United States, can be consolidated and much obsolete language removed. Much of Article XVIII, Congressional and Legislative Apportionment, is obsolete in view of recent Supreme Court decisions. The Schedule of the constitution, providing for the transition from territorial status, was obsolete the day North Dakota became a state.

#### Initiated and referred statutory measures

A total of 151 statutory measures have been voted upon since the adoption of the twenty-second amendment, establishing the initiative and referendum for statutory measures, in 1914. Thirty-one of the 50 referred measures were defeated at the polls as were 57 of the 101 initiated measures.<sup>1</sup> Many of these measures were placed on the ballot more than once, some up to four times, and the nature of most is such that the legislature could adequately have handled all questions.

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<sup>1</sup>Omdahl, North Dakota Votes, p. 4-5.

Eight of the measures dealt with the elective franchise, only two of which passed. Some of those defeated dealt with the extension of the use of the absentee ballot to those who lived over one-half mile away from the polling place and extended the use of the absentee ballot to include qualified electors who plan to be absent from their precinct. In addition to the petty measures vetoed by the voters there were many proposals, mainly referrals, that would have led to basic reorganization of the elective requirements. There always seem to be a few people who feel that they will be hurt by reorganization and those few can create doubt in the many. Questions concerning the operation of the elective franchise should be handled by the legislature without asking for voter approval. The public knows little about the operation of elections but if there is something that concerns the general public the legislators will soon get the message.

Thirty-six measures have been proposed regarding taxes and tax administration in this state. Twenty-eight of these have met defeat at the polls. The standard rule on tax measures is to vote "no" to be sure that the taxes do not go up. Taxes and government are a way of life and we must come to accept the fact that the legislators do not want to raise taxes because they too are affected and must face re-election. The uninformed electorate must put faith in their legislators and give them the power necessary to execute this faith.

Eighteen statutory measures have been submitted to the people regarding the establishment, powers, and regulations of

state boards and commissions. Nine of these measures have been defeated but none of them should have even reached the polls in the first place. The legislature should be empowered to restore powers regarding teacher certification to the Superintendent of Public Instruction, create an office of state supervisor of grades and weights, or ratify the actions of the tax commissioner in the settlement of taxes on bank stocks. These, and others, are legislative questions and should not be subject to electoral review by the people of North Dakota.

Sixteen proposals governing the operation of the liquor laws of the state have also reached the polls. A measure establishing municipal liquor stores met defeat four times; twice the electorate voted on proposals prohibiting liquor establishments to be open after certain hours in the evening. The voters have also had to pass judgement on proposals calling for the selling of liquor in restaurants, side-by-side with candy and tobacco, where dancing was permitted, and in drug stores. Eleven proposals were defeated at the polls and two of the five approved measures had been rejected at one time. Again, these questions are best handled by the legislature because they are generally out of the realm of direct public interest. Public sentiment would be reflected in the outcome.

The remaining statutory measures, seventy-three of them, are also of such a nature to warrant only legislative action. The voters have been asked to decide questions that they knew little, if anything, about. These run from three measures on parking meters to four proposals governing the showing of

motion pictures on Sunday. One approved measure prohibits the waving of black and red flags, another permits baseball on Sunday, a third requires that creameries post their fees where all can see, still another reduced the number of crewmen required on long freight trains from six to five.

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