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January 21, 1972

MEMORANDUM

TO: Executive Committee, Constitutional Convention
FROM: Executive Reorganization Office
SUBJECT: Recommendations Re: Executive Branch

Below are the recommendations of this office, together with our comments concerning each of the recommendations.

Recommendation: That Section 21, Article VII of the Constitution, providing that there shall be no more than 20 principal departments, exclusive of the seven elected constitutional officers, be retained.

Comments: This section was approved by 70 per cent of the voters in the 1970 general election. The amendment was complied with through the Executive Reorganization Act of 1971 (Chapter 272, Laws of 1971). Reorganization is now being implemented by the Governor and will be fully effective by December 31, 1972. The beneficial results of the 20 agency constitutional amendment are already being realized: economies are being realized and a more effective and responsive state government is being formed. The amendment should be retained so that the state can avoid the proliferation of agencies such as occurred between 1889 and 1971.

Recommendation: That Section 20, Article VII of the Constitution, providing for the Board of Examiners and Board of Prison Commissioners, be repealed.

Comments: Under the Executive Reorganization Act of 1971, the Board of Examiners has been transferred to the Department of Administration for administrative purposes only. The powers of the Board are undefined and it has only one constitutional duty--to examine unliquidated claims against the state. This is a statutory-type duty which we believe should be assigned by the Legislature to the Department of Administration.

The Board, once the center of fiscal control and internal management for the state, has been stripped of all its statutory duties except those regarding the planning, financing, administration and construction of state buildings. Its fiscal management powers have been transferred to the Department of Administration. While the long range building program is administered by the Department of Administration, the major policy decisions are made by (or at least reviewed by) the Board. Absence of a constitutional provision for the Board of Examiners would not prevent

the Legislature from vesting such power in the chief elected officials of the state, if that were desired.

The Constitution provides that the Board of Prison Commissioners is to perform such duties as are prescribed by law. The Board of Prison Commissioners has no duties prescribed by law and, therefore, no duties to perform. All prison-related duties have been transferred by law to the Department of Institutions. There is no reason for this non-functioning Board to appear in the Constitution.

Recommendation: That Section 14, Article XII of the Constitution, providing for the State Depository Board, be repealed.

Comments: For all practical purposes, this Board is defunct. An informal meeting--often just by telephone--is held perhaps once a year to approve administrative actions of the State Treasurer. The type of provisions contained in this section should be statutory, not constitutional. If the Depository Board were to exercise the powers delegated to it by Section 14, Article XII (designating depositories and fixing interest rates) it would seriously complicate the effective and efficient management of the investment program by the Department of Administration.

Recommendation: That Section 1, Article XVIII of the Constitution, providing for Departments and Commissioners of Labor and Agriculture be repealed.

Comments: Repeal of this section would eliminate the constitutional status of the Departments of Labor and of Agriculture. There are no particular advantages to "constitutional status" for a department. In fact, the "constitutional status" of the Department of Agriculture, Labor and Industry, until its split in 1951, was probably detrimental--it required a constitutional amendment to split the department, a task that could otherwise have been accomplished by simple legislation.

The constitutional term of office specified for the Commissioners also prevented the Legislature from providing, in the Executive Reorganization Act, that the heads of these Departments would serve at the pleasure of the Governor.

The constitutional status of the Departments did not prevent the proliferation of Agriculture and Labor-related boards, bureaus, and agencies, nor did it prevent the Legislature from consolidating those functions into the proper department in the Executive Reorganization Act. The Constitution states: "The powers and duties of each commissioner shall be prescribed by the legislature."

This section should not appear in the Constitution because it restricts the Legislature's authority to organize and reorganize the executive branch.

Recommendation: That Section 8, Article VII of the Constitution, providing for the office of State Examiner, be repealed.

Comments: This provision of the Constitution greatly restricts the ability of the Legislature to assign examination-type duties to appropriate agencies of state government. The State Examiner has administratively delegated his duty of examining the accounts of the State Treasurer and Supreme Court Clerk to the Legislative Auditor. The Reorganization Act provides that the State Examiner is to head the Department of Business Regulation and that the functions of the municipal division of his office are to be transferred to the Department of Intergovernmental Relations. However, because of Section 8, Article VII, the State Examiner must retain supervisory control over the examinations of the Clerk of the Supreme Court, State Treasurer, District Court Clerks, and County Treasurers. Repeal of this section would enable the Legislature to transfer examination duties to the department to which the duties are most closely related.

Recommendation: That Section 9, Article VII of the Constitution be amended by removing the constitutional status of the Board of Pardons.

Comments: This proposal is based on the Model Executive Article prepared by the National Governors' Conference. It would eliminate the constitutional control of the Board of Pardons over the Governor's authority and enable the Legislature to provide for matters of clemency as it deems appropriate.

Recommendation: That Sections 9, 15, and 16, Article XII of the Constitution be amended by removing the constitutional status of the State Board of Equalization.

Comments: At present, the overlapping constitutional terms of office of members of the Board of Equalization are not consistent with the central control of the Governor. The Executive Reorganization Act makes the Board of Equalization the head of the Department of Revenue. Removal of the Board from the Constitution would allow the Legislature to assign the constitutional duties of the Board to the Department of Revenue proper. The method of tax determination, assessment, and collection should, wherever possible, be left to legislative enactment.

Recommendation: That Section 37, Article V of the Constitution, which prohibits the Legislature from authorizing the investment of trust funds in the bonds or stock of a private corporation, be repealed.

Comments: Repeal of this section would give the Legislature the discretion of determining what limitations, if any, should be placed on the investment of trust funds. If interpreted literally, this section applies not only to trustees of state funds but also to all executors, administrators, guardians and trustees--including banks and private individuals.

There are several other constitutional provisions relating to investments which should be examined carefully, particularly Article XXI, the Montana Trust and Legacy Fund. We know from our own study that this Article is deficient and excessively detailed, but we are not equipped to recommend any specific constitutional standards on the subject of investments. We believe you should contact the experts in this area--the Board of Investments.