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John C. Sheehy

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Sheehy, John C., "John C. Sheehy's statement about Article XI, Section 8" (1972). *The Montana Constitution Collection*. 151.

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Statement of John C. Sheehy
on Article XI, Section 8

TO THE MEMBERS OF THE EDUCATION COMMITTEE:

My name is John C. Sheehy, of Billings. I am an attorney. I appear as a citizen and as a member of the Montana Catholic Conference. I am the father of eleven children who have been or are being educated in public and private schools.

My position here is to urge you to forego the restrictive provisions of Article XI, Section 8 of our present state constitution, and to rely instead upon the identical provisions of the First Amendment to the Federal Constitution.

It is an amazing spectacle to find persons appearing here who are fearful of the provisions of the First Amendment, when for nearly 200 years those provisions have served very well to preserve the separation of Church and State in our country.

It is to the provisions of the First Amendment that the courts have gone to find the constitutional safeguards that demark and delimit the relations of Church and State. Our American heritage of separation, so much applauded by witnesses here, came from court decisions interpreting the First Amendment; that heritage did not arise from cases interpreting Art. XI, Section 8, and the presence or absence of Art. XI, Section 8 would have little or not effect upon the heritage that is founded on the First Amendment.

The result of the decisions interpreting the First Amendment is that the state cannot sponsor religion, give financial support to religious activities, or involve itself in religion or religious activities.

Between the clause of the First Amendment which prevents any law respecting the establishment of a religion, on the one hand, and the clause which forbids any law which will prohibit the free exercise of religion on the other, is room for "play in the joints" said the Walz case. In matters of church and state, the state is neutral; it is not to be an adversary of religion.

Since the First Amendment demonstrably affords full protection to church and state, and prevents their intermingling, is there any real need for the rigid provisions of Article XI, Section 8? We submit that there is not.

Article XI, Section 8 has worked to prevent the adoption of worthy educational programs in this state. For example, the state of Texas adopted in 1965 a College Student Loan Act, under which bonds were sold to provide moneys for loans to students in public and private colleges in Texas. Since then loans under that program have been made to 68,000 Texas collegians attending 123 different colleges in Texas. The Federally Insured Loan Program now provides insurance that the loans will be repaid.

In 1965, the same program was offered in the Montana legislature. It passed the House but was killed in the Senate because the members there felt it offended the provisions of Article XI, Section 8. There is no way to tell how many students might have benefited if the act had passed, but more than 20 other states have the same type of program.

It is true that there are now federal loan acts available to students now for both public and private schools. Not all students can qualify, however, and availability of funds by federal appropriation is a problem. The Texas experience demonstrates the real need that exists for such a program.

The loan program is only one example. The rigid and restrictive Article XI, Section 8 would actually have prevented, if it were a national provision, such beneficial college programs as the G.I. Bill of Rights, which provided aid to veterans irrespective of the college attended, public or private.

The contribution of private schools in Montana, as in the nation, is immeasurable. Montana should not adopt an adversary stance to those schools; it should state its constitutional provisions adequately, but with objectivity and fairness. The provisions of the federal First Amendment meet every test of adequacy, objectivity and fairness. With the First Amendment goes a body of law developed over two centuries. Some there are, perhaps even those who accuse us of pluralism, that do not like that body of law, but it is the law of the land. It has worked; it is working; it will work well in Montana.

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