Winter 1-16-1972

Constitutional Convention

Daniel J. Foley

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Arthur P. Hutchinson

Harley Hettick

Constitutional Convention

We're getting a new Constitution

In this section

Con Con costing $690,000

Nearly $690,000 in state funds is going into re-writing Montana's 82-year-old constitution.

The constitutional convention, which reconvenes this week, has a state appropriation of $499,281—enough for 60-80 working days.

The appropriation will be spent mainly to hire administrative, clerical and research staff and to pay delegates. Delegates receive the same pay as legislators—$45 a day, plus mileage reimbursement for three trips between their home and Helena.

In addition, the 1971 legislature appropriated $149,540 for the Constitutional Convention Commission, the appointed group which arranged for convention preparations and research.

Most of the commission's budget has been spent to hire a professional research staff and print their reports. Any money left in the commission budget Feb. 1 goes into the general convention budget.

The remaining $41,000 of the total state appropriation of $689,821 was allocated to the secretary of state for the special September and November Con-Con elections.

In appropriating money for the convention, the legislature also anticipated a federal grant of $146,461, but it never materialized.

This issue's authors

HUTCHINSON

FOLEY

CURRAN

HETTICK

Publication of this special issue about the Montana Constitutional Convention is the culmination of planning which began four months ago, before delegates were even elected.

Reporters in the Lee Newspapers State Bureau recommended to superiors that a special issue be published as a public service, without advertising. The idea was approved by Strand Hilleboe, operations manager of Montana Divisions of Lee Enterprises Inc., and endorsed by publishers and editors of the Billings Gazette, Missoulian, Montana Standard in Butte and Independent Record in Helena.

Dale A. Harris, then executive director of the Montana Constitutional Convention Commission and now executive director of the convention, has been most helpful from the beginning.

Reporters in the Lee Bureau used numerous sources in compiling information and writing stories, but depended most heavily on reports by the commission's staff of researchers: P. Rick Applegate (bill of rights), Roger A. Barber (taxation and finance), Richard F. Bechtel (legislature), Karen D. Beck (executive), James T. Grady (suffrage and elections), Jerry R. Holloron (local government), Sandra R. Muckelston (judiciary) and Bruce R. Sievers (education). Without the help of those individuals, this publication would not have been possible.

The issue was printed at the Billings Gazette plant on an offset press. The following newsmen did the writing, editing and photographing:

DANIEL J. FOLEY, 29, is chief of the Lee Newspapers State Bureau. He is a native of Laurel and was graduated from the University of Montana, with a bachelor's degree in journalism, and Northwestern University, Evanston, Ill., with a master's degree in journalism. Foley has been with the State Bureau for three-and-one-half years and has been bureau chief since April. He and his wife, Lela, have two children.

DENNIS E. CURRAN, 27, has been with the Lee State Bureau since June. He is a native of Madison, Wis., and was graduated from the University of Wisconsin with a bachelor's degree in history. He also did graduate work in journalism at the school. Curran was a reporter with the Missoulian for four years before his transfer to the State Bureau. His wife's name is Julie.

ARTHUR P. HUTCHINSON, 43, has been with the Lee State Bureau for two years. Born in Philadelphia, he was brought up in Connecticut and came to Montana in 1954. Hutchinson was graduated from Bates College, Lewistown, Maine, with a bachelor's degree in geology. Before joining the State Bureau, he worked as a mining engineer in Butte for the Anaconda Co. from 1954-57 and was a newsman with United Press International. He and his wife, Patricia, have four children.

HARLEY HETTICK, 29, took the pictures of the Constitutional Convention organization session which appear in this issue. He is a native of Bismarck, N.D., and spent two years at Bismarck Junior College and two years at Dickinson State College. Hettick has been photographer for the Missoulian for four years.

Cover art was designed by Craig Curtiss of The Billings Gazette, as were the caricatures throughout the section. Art work depicting early and present day convention presidents on page 8 was done by Joe Boddy of The Missoulian and other art work was done by John Watson of Butte Montana Standard.

MONTANA CONSTITUTIONAL CONVENTION
OF THE PEOPLE
BY THE PEOPLE
FOR THE PEOPLE
1971 - 1972

"A constitution states or ought to state not rules for the passing hour but principles for an expanding future."
—Justice Benjamin Cardozo

From rapt attention to relaxation. The varied reactions to action on floor of Constitutional Convention are from Dorothy Eck of Bozeman and Dave Drum, Billings (upper left); unidefintified cigar smoker at lower right; R. J. Studer, Billings, (upper right); Marian Erdmann, Great Falls; and Robert Kelleher, Billings, (lower right.)

How Montana got into this

> *"Provisions which invite subterfuge, provisions which are archaic, provisions which are ambiguous, provisions which are statutory, and provisions which place serious limitations on effective state government were found throughout the Montana constitution."*
>
> *—Montana Legislative Council report on the Montana Constitution, 1968*

A decade of discontent over a variety of constitutional maladies helped bring the historic decision by Montana voters to call a constitutional convention.

While Montana's 1889 constitution had served the state well in many respects, by the early 1960s it was apparent to many, both in and out of government, that some doctoring was necessary.

GRUMBLING OVER the constitution grew louder and louder during the decade as more and more people began to see in the constitution faults and limitations as well as virtues.

Complaints came not only from legislators and city councilmen but civic groups like the League of Women Voters. Special citizens' conferences were formed to explore such topics as legislative and judicial reform.

Critics of the constitution said its language was too often long-winded and confusing; sometimes it contained specifics better written into the statutory law books. Most important, they complained, it too often shackled government.

Like many constitutions of the late 19th Century, Montana's fundamental law often reflects the district people felt then for government in general and the legislature in particular.

Some constitutional provisions, critics contend, not only protect the people by preventing government from taking bad actions, they prohibit government from taking any actions at all.

The Legislative Council studied the constitution in 1967-68 and concluded that "substantial revision and improvement" was needed to provide for "active, dynamic government."

The council recommended that of the 262 sections in the constitution, 85 should be repealed entirely and another 53 should be revised—a total of 52 per cent.

Only 48 per cent of the sections were deemed "adequate," and even there the council suggested there was room for improvement. Moreover, the council's approach was basically conservative—it generally did not consider constitutional alternatives which would dramatically restructure government.

THE COUNCIL said it found constitutional provisions which "invite subterfuge" and are "archaic, ambiguous and statutory and which place serious limitations on effective state government."

However, the council members could not agree on any "best" method of revising the constitution and finally concluded that the legislature should establish a constitutional revision commission.

The 1969 legislature established a revision commission, but it also decided to ask the people in a 1970 general election referendum if they wanted a constitutional convention.

The 16-member revision commission began its study of the constitution quickly and even had subcommittees "drafting" proposed constitutional changes.

But by late 1969 the commission decided that revision was such an enormous task, it would be better accomplished through a constitutional convention. So the commission stopped drafting and started pushing for a favorable vote on the referendum.

In June of 1970 still another group was organized—the broad-based, bi-partisan Montana Constitutional Convention Committee, which plugged for passage of Referendum 67 to call the convention.

THE PEOPLE agreed. Referendum 67 was approved by the overwhelming margin of 133,482 to 71,643; for the first time since becoming a state, Montana would have a constitutional convention.

The groundwork was laid by a specially appointed Constitutional Convention Commission, and on Nov. 29, 1971 Gov. Forrest H. Anderson called the convention to order for a three-day organizational session. Since then, the 100 delegates have been studying constitutions of other states and research reports prepared by a professional staff.

This week the delegates will reconvene in Helena to begin work on the directive from the people to "revise, alter or amend" the Montana Constitution.

Constitutional Convention delegates open session with prayer, pledge and taking of oath.

In theory, a transition

Montana's government isn't likely to collapse in chaos if the voters approve a constitution which brings a new look to the highest law in the state.

Whether changes involve minor rewording or major restructuring, the predecessors of the Constitutional Convention were wise enough to provide for some transition between old and new.

Under the enabling act passed by the last legislature, the convention must set dates for the various revisions to take effect if approved by the voters.

WHILE SOME provisions could go into effect on passage, others probably will require time, perhaps even several years, to implement.

The legislature also provided for taking care of any statutory law which could be supposed to outline the general structure and fundamental principles of the state. The detailed mechanics of those principles, however, are to be left to statutory law passed by the legislature—law which an be changed from time to time with greater ease than the constitution.

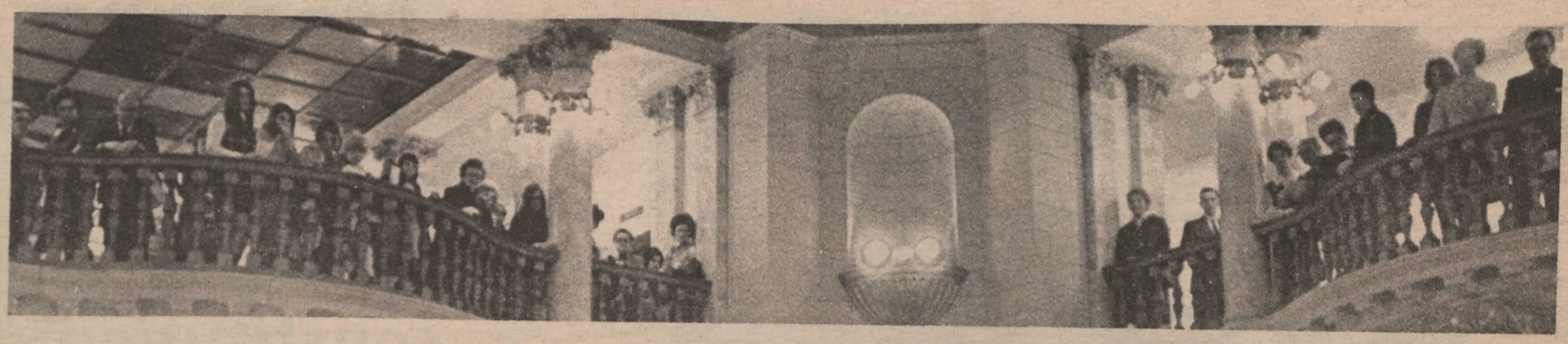
Montana's 1889 constitution is full of such statutory provisions, and the delegates are expected to get rid of many of them—from the constitution, that is, not the lawbooks.

UNDER THE ENABLING act the convention may prepare a schedule of proposed legislation which would implement any new constitutional provisions or replace statutory language dropped from the constitution.

Delegates won't pass the laws themselves, but they will suggest provisions for the 1973 legislature to consider.

In theory, it would provide a transition similar to executive reorganization: The "20's Plenty" constitutional amendment was passed in 1970; the 1971 legislature set up the mechanics with an executive reorganization law; and the governor is now implementing the law.

Any proposed constitutional revisions will go before the voters, probably in the Nov. 7, 1972, general election.



John Q. will have last word

The most important man in the rewriting of Montana's Constitution won't be the convention president or any of the delegates, but the ultimate "consumer," John Q. Citizen.

John Q. gets the final vote on the document the delegates will propose, and if old John isn't satisfied, he won't be buying.

Early in the work session, convention delegates will consider adoption of several rules aimed at ensuring the education of and participation by John Q. in the convention process.

The two most significant recommendations are that all convention meetings be open to the public and the press and that seven days notice be given for all hearings.

ONE PROPOSAL for giving John Q. some direct influence on the convention is to accept "citizen suggestions," which would be referred to the appropriate committee in the same manner as delegate proposals.

MOST OF THE WORK during the first month or more will be in public hearings and committee meetings. Most of the hearings will be in Helena, although consideration is being given to having a few elsewhere in the state. Because funding for the convention may limit travel, it is more likely that delegates will take a recess or two during the work session to return home to get citizen reaction.

Unlike legislative sessions, each proposal from a delegate (or citizen) need not be acted upon individually.

It is more likely that public hearings will be scheduled on each major issue. The legislative committee, for example, probably will have a hearing on unicameral vs. bicameral legislature, another on annual vs. biennial sessions and others on different topics.

Committees will then draft an article, based on individual proposals, staff research and public hearings. A majority report and, in instances of committee disagreement, a minority report will be printed and forwarded to the convention floor for debate and adoption.

THE CONSTITUTION finally adopted by the entire convention will be submitted to the voters for approval or rejection. Some of the more controversial subjects probably will be put to a separate vote to prevent the entire document from being defeated because of one or two provisions.

The submission of the new document to John Q. Citizen must be no earlier than two months nor later than six months after the convention adjournament.

If the convention takes the anticipated 60-80 days, delegates may ask for John Q's approval either in the June primary or in the November election.

In the latter case, the document would have to be signed in a special session for that purpose in May.

PARTICIPATION

Committees

The following are the committee assignments made by Constitutional Convention President Leo Graybill Jr. at the organization meeting Nov. 29-Dec. 1. The first name listed is that of the chairman.

The 10 substantive committees:

Bill of Rights: Dahood, Blaylock, James, Monroe, Mansfield, Sullivan, Murray, R. S. Hanson, Campbell, Foster, Eck.

Legislative: Assheim, Loendorf, Skari, Bugbee, Romney, Cate, Harper, Robinson, Nutting, Johnson, Reichert, Kelleher, Toole, Bates, Leuthold.

Executive: Joyce, Garlington, Roeder, Arbanas, Warden, Wilson, Babcock, Martin, Felt.

Judiciary: Holland, Pemberton, Melvin, Eskildsen, Rod Hanson, Aronow, Schiltz, Bowman, Berg.

Local Government: Oscar Anderson, Blend, Arness, Roilins, Sparks, Payne, Ask, Erdmann, Speer, Jacobsen, Simon.

Revenue and Finance: Rygg, Driscoll, McKeon, Artz, McDonough, Wagner, Drum, Berthelson, Furlong.

Education and Public Lands: Champoux, Noble, Davis, Cain, Conover, Harbaugh, Barnard, Harrington, Woodmansey, Burkhardt.

Public Health, Welfare and Labor: Heliker, Ward, McCarvel, Buskirk, Svanberg, Scanlin, Mahoney, Studer.

Natural Resources and Agriculture: Cross, Gysler, Brazier, Siderius, John H. Anderson Jr., Kamhoot, Delaney, McNeil, Rebal.

General Government and Constitutional Amendment: Etchart, Harlow, Vermillion, Lorello, Belcher, Choate, Brown, Habedank.

The four procedural committees:

Administrative: Toole, Eck, Bowman, McKeon, Furlong, Noble, Rod Hanson, Simon, Rygg, Cross.

Style, Drafting and Transition: Schiltz, Burkhardt, Holland, Blend, Blaylock, Roeder, Speer, Carlington, Loendorf, Berg, Kelleher.

Rules and Resolutions: Murray, Eskildsen, Bates, Romney, Erdmann, Ask, Joyce.

Public Information: Toole, Warden, Brown, Sparks, Vermillion, Champoux, Martin, Pemberton, Woodmansey, Davis, Payne, Bugbee, Babcock.

Your clout can be used

How can an average citizen influence the work of the Constitutional Convention?

Here are some ways:

1. SUBMIT A "CITIZEN SUGGESTION." Many delegates already have spoken in favor of the idea, which was used in the Hawaii convention. The proposals, which can be in the form of minor provisions or entire articles, will be referred to the proper committee for consideration.

2. TESTIFY AT A PUBLIC HEARING. Testimony will be remembered better if it is submitted in written form as well as read. Convention officials recommend that 15 or 20 written copies be provided by those testifying, but the extra copies are not required.

3. WRITE TO YOUR DELEGATE REPRESENTATIVES. Address correspondence to: The Honorable (Delegate's Name), Montana Constitutional Convention, State Capitol, Helena, Montana 59601.

4. VOTE ON THE FINAL DOCUMENT. The Constitution drafted by delegates is only a proposal to the people. Citizens of the state will exercise the final decision whether the proposal is or is not worthy of status as the state's fundamental law.

Statehood spurred present constitution

1889

The drafting of Montana's existing Constitution in 1889 marked the end of a quarter century of frustration in the quest for statehood.

The 1972 convention, called to update that document which has survived 82 years with only a few modifications, will be the fourth in the history of the territory and state.

It will, however, be the first called by the people. Previous conventions were convened by the acting governor (1866), the territorial legislature (1884) and congressional enabling legislation (1889).

Each of those conventions, plus several formal appeals by the legislature, were aimed at ending a territorial government described by the 1883 assembly as "little better than the colonial system under British rule."

The territorial governor, secretary and three Supreme Court justices were appointed by the President of the U.S., often for party service elsewhere.

Residents of the territory elected a delegate to the U.S. House of Representatives who could debate and serve on committees, but not vote. Montanans also elected members to a two-house territorial legislature, but Congress had authority to review acts of the assembly and, in fact, annulled the entire body of law passed in 1866.

ALSO SPURRING the desire for statehood was the need for investment money from the states for both the mining and agriculture industries, investment more likely under statehood than territorial status.

The first convention, assembled in 1866 when the territory was only two years old, was called by Acting Gov. Thomas F. Meagher. It met in Helena instead of Virginia City, then the territorial capital.

Fifty-five delegates were elected, but the convention had difficulty assembling a quorum. It met for six days and adopted a constitution reportedly based on the proposed Colorado constitution, with modifications borrowed from New York and California.

To this day, historians aren't sure what became of that constitution, although the traditional account has been that the document was lost somewhere between Montana and St. Louis, where it was to be taken for printing.

THE TERRITORIAL legislature appealed to Congress for statehood on several occasions between 1866 and 1883, but the requests did not meet with favorable response. In 1884, 45 delegates gathered in Helena, by then the territorial capital, for a convention called by the legislature.

The convention met for 27 days and drafted a body of fundamental law which in large part was carried over by the convention which was to follow five years later. That 1884 document was approved by Montana voters 15,506 to 4,266, but Congress continued to delay admission of western territories because of partisan fighting in the nation's capital.

The congressional deadlock finally ended after the election of 1888. With passage of the Omnibus Act of Feb. 22, 1889, Congress invited Montana, Washington, North Dakota and South Dakota to meet in conventions aimed at statehood.

The Montana convention convened on July 4 and banners across Helena's Last Chance Gulch proclaimed "Independence Forever."

The 75 delegates debated for 45 days, their 800,000 or so words still preserved in the official proceedings of the convention, and incorporated an estmated 90 per cent of the wording of the 1884 document in the new constitution.

THAT THE DESIRE for statehood was strong among the residents of the territory and the delegates is evidenced by the resulting compromises between divergent views of the populous and wealthy mining counties of western Montana and the sparsely populated and poorer agricultural counties of the eastern part of the territory.

Compromise did come, with the mining tax exemption of the 1884 convention written into the new document to benefit the west and legislative apportionment providing one Senator for each county to benefit the east.

At least 33 of the 75 members of the 1889 convention were engaged in mining, held mining stock, dealt in mining law or had some other direct mining connection. Many were indirectly involved with the industry, including merchants and farmers whose livelihood depended on mining towns. Twenty-three delegates were lawyers and nine were stockmen. Chairman of the convention was W. A. Clark of Silver Bow County, a captain of the mining industry and a banker, who also chaired the 1884 convention.

The document drafted by delegates reflected the prevailing views of the time: a distrust of government, as evidenced by restrictions on the legislature and division of authority, in the executive branch, and a distrust of big corporations, especially railroads.

The document was ratified by the voters 26,690 to 2,274 and President Benjamin Harrison proclaimed Montana the 41st state on Nov. 8, 1889.

1972

New look for bill of rights

Mae Nan Robinson
ConCon's
youngest delegate

Montana's bill of rights could have a new and expanded look after the work of the 1972 Constitutional Convention.

Delegates probably won't tamper much with the abiding principles which have protected the people from the politicians for centuries. But they probably will consider adding some new rights to protect people from new threats emerging in the 20th Century.

Provisions like a right to a clean environment, a right to privacy and a right to education likely will receive serious consideration. Other issues likely to face delegates include abortion, housing, discrimination, secrecy and wiretapping.

Ironically, concern for new rights comes at a time when some suggest that state bills of rights are no longer needed because of the extension of the federal Bill of Rights to the states.

But a Constitutional Convention Commission research report on the Montana Declaration of Rights observes that the federal government has not always been the staunch defender of civil rights it is today and it may not be tomorrow.

Declarations of rights—the formal assertion of liberties and protection against infringements by government—date back through English common law and the Magna Carta to classical Greece.

In America, bills of rights originated with the colonies. The first 10 amendments of the federal constitution—the federal Bill of Rights—were an afterthought and were extended to the states only through court decisions.

An argument for retaining strong state declarations of rights, the report says, is that states can serve as "little laboratories" to develop and test new rights.

Both the Montana Legislative Council and a Constitutional Revision Commission subcommittee concluded in their studies that 21 of the 31 sections are adequate; collectively, they recommended deleting only four sections. However, most critics agree that some rewording and reorganizing of the helter-skelter order would help.

Beyond that lies possible extension of rights or formation of new ones, including these:

—**PRIVACY.** Historically, privacy may have been a revered principle, but it was not written into early American constitutions.

—**EDUCATION.** Most constitutions impose duties of education on state government, but only North Carolina and Puerto Rico state what many feel is a fundamental principle—a right to education. Such provision would not only include the right to an education but often some freedom of choice to prevent citizens from being dominated by an educational system.

OTHER "SERVICE RIGHTS like right to medical care, work and adequate housing. According to proponents, these service rights are needed to protect the people in a modern age. Opposition is based not so much on the principles themselves but their place in a constitution. Most critics say such rights are neither fundamental nor enforceable and should be left to the legislature.

—**SECRECY.** Growing concern that the public's right to know is being thwarted by a maze of governmental secrecy has prompted some interest in writing a broad right-to-know provision in the constitution.

—**SEARCH** and Seizure. Montana's provision on searches fails to mention electronic eavesdropping and wiretapping. Some think it should.

—**ABORTION.** While abortion reform battles often are fought in legislatures, proponents likely will push for a so-called "women's right" in the constitution.

—**DISCRIMINATION.** While the Montana Constitution declares all people to be born "equally free," some think the language should prohibit discrimination on the basis or race, creed, sex, and ethnic origin.

". . . Some think the language should prohibit discrimination on the basis of race, creed, sex, and ethnic origin."

Life, liberty and clean environment

Do Montanans have a right to a clean, healthy environment?

Neither the United States Constitution nor the 1889 Montana Constitution specifically state such a right, but there is a growing trend to add explicit environmental provisions to constitutions.

The issue likely will be the least controversial of a trio of environmental issues facing Constitutional Convention delegates. The others, according to a Constitutional Convention Commission report on environmental rights:

—Enforcement provisions, including giving citizens the right to sue to prevent environmental degradation.

—Extension of the "public trust doctrine" from state control over land and water to state authority over use of land and the total environment.

SOME CONSTITUTIONAL scholars contend that a right to a clean environment is implied in federal and state constitutional rights protecting "life, liberty and the pursuit of happiness" or guaranteeing "unenumerated rights" not specifically written down.

While Montana's new Environmental Policy Act already states a "right" to a clean environment, many feel the right also belongs in the fundamental law.

But the commission report notes that simply stating the right may be "yesterday's battle" and probably won't draw any great opposition. The real issue, the report said, is enforcement.

SOME STATES give citizens the right to sue both governmental agencies to make them act and private persons or corporations to stop real or potential pollution. The important point is that citizens would not have to suffer actual damages from environmental degradation and could take action before any pollution occurred.

At least nine states and the federal government are considering extensions of legal standing to sue. The 1971 Montana Legislature rejected four such proposals.

Probably more controversial will be proposals to extend the "public trust doctrine" to give the people of the state a voice in determining that all land is used in the best public interest.

The public trust doctrine arises under the state's power of "eminent domain"—the power of the state to take private property, with just compensation, for public use. The theory behind this power is that all land ultimately belongs to the people.

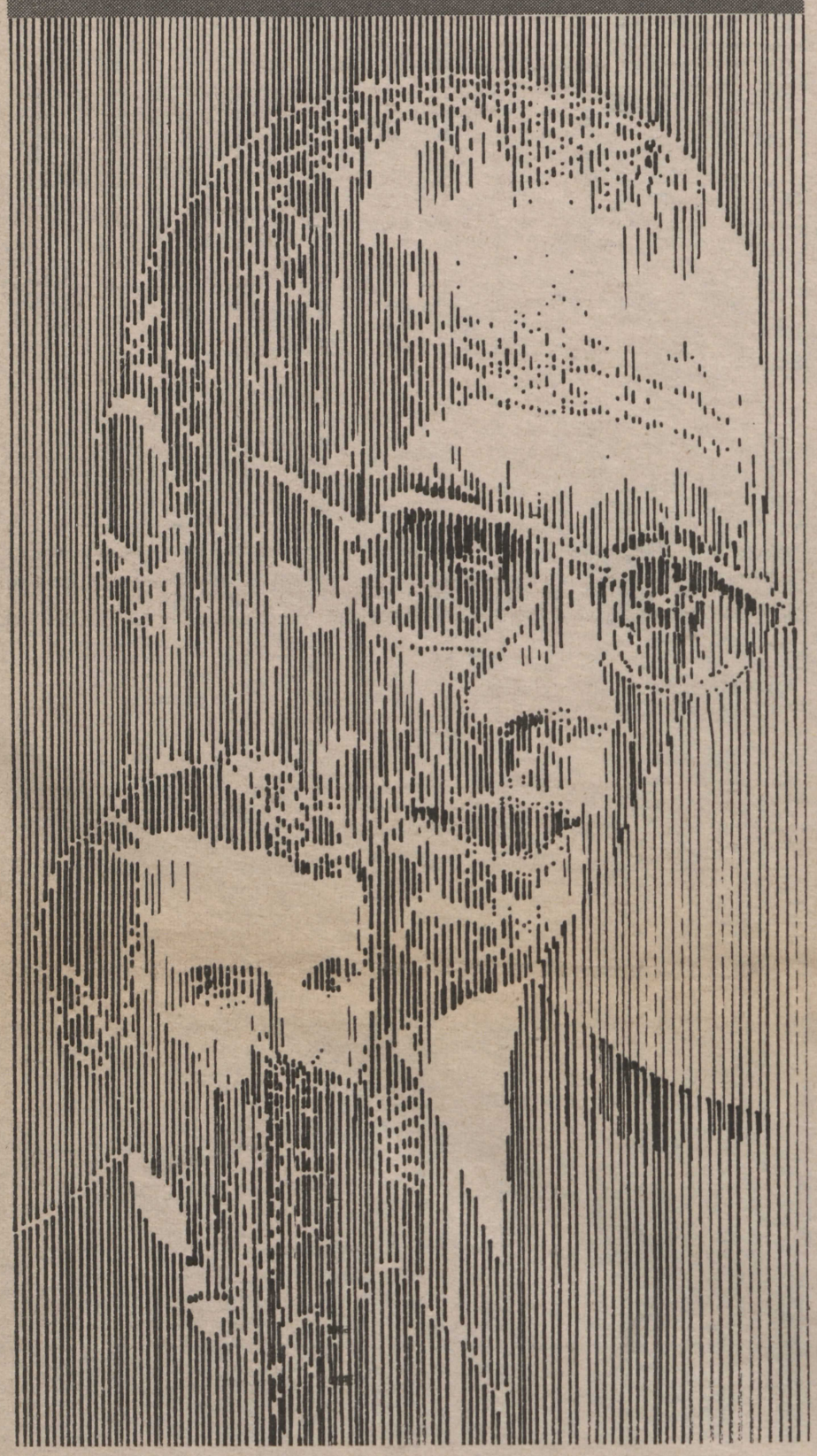
Under the trust doctrine, the state in effect is the public guardian for land which is part of a public trust and must see that the land use would not harm the public interest.

"In the highest sense," Teddy Roosevelt's National Conservation Commission said in 1909, the resources "should be regarded as property held in trust for the use of the race rather than a single generation and for the use of the nation, rather than individuals who may hold them by right of discovery or purchase."

MONTANA RESTRICTIONS to insure air, water and wildlife quality are based on the public trust doctrine, though the Montana Constitution does not state the theory explicitly as some states do.

The report calls an expanded trust doctrine "a blanket tool" and possibly "the most pervasive source of legal protection" for preserving the environment.

LEADERSHIP



W. A. Clark, president of 1889 convention, and Leo Graybill Jr., president of 1972 convention.

Where party labels don't mean so much

A bipartisan leadership team gives the 1972 Constitutional Convention the look of a gathering where party labels don't mean so much.

The five convention leaders (two Democrats, two Republicans and an independent) provide the convention with a political and geographical balance which some thought impossible at the start of the three-day organizational session last November. Committee assignments and chairmanships also reflect the diversity of the convention with balance between parties, geographical areas, women and men, occupation and outlook. Chairmanships are held by seven Democrats, six Republicans and one independent.

AND DELEGATES took a big step toward minimizing factions when they voted to continue sitting in a alphabetical order rather than by party or district.

The elected convention leaders are:

—**PRESIDENT LEO** Graybill Jr., a Great Falls Democrat. Graybill, a 47-year-old attorney, ran unsuccessfully for Congress in the Eastern District in 1960 and 1962, and his father is a former speaker of the Montana House. Graybill is chairman of the Great Falls International Airport Commission and a former deputy county attorney. He has a degree from Yale University and a law degree from the University of Montana, where he once taught political science. Graybill's wife, Sherlee, owns a Great Falls radio station. The couple has three children.

Leo Graybill Jr.
President

—**FIRST VICE PRESIDENT** John H. Toole a Missoula Republican. Toole, 53, is associated with a Missoula bond-insurance firm. Although he served in the 1953 Legislature, he is best known for his work in nonpolitical civic projects. In recent years he has led businessmen in downtown and riverfront development projects. Toole formerly served on local planning and park boards, the Montana Crime Control Commission and the Columbia River Compact Commission. He and his wife, Barbara, have two children. His grandfather, John R. Toole, was a delegate to the 1889 convention.

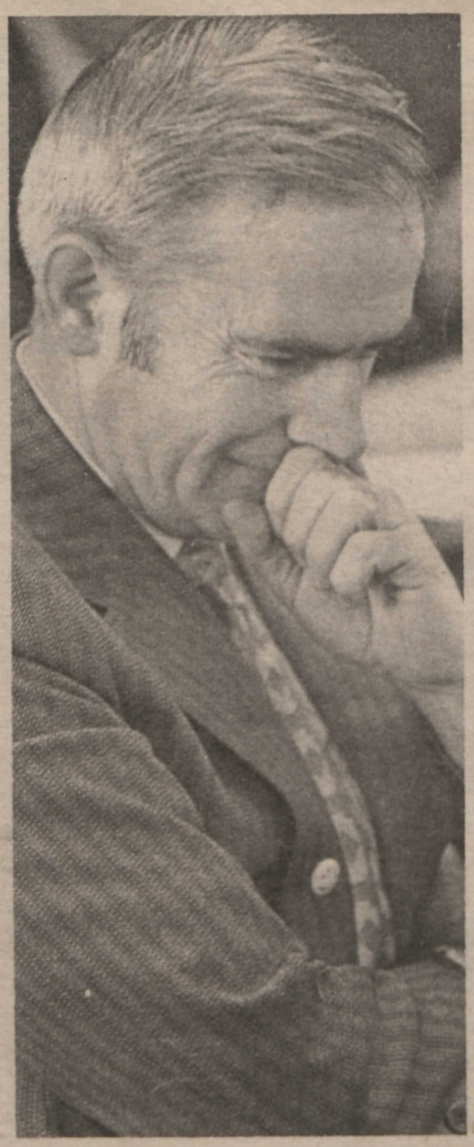
—**EASTERN DISTRICT** Vice President Bruce M. Brown, a political independent from Miles City. Brown, a 49-year-old attorney, was defeated by Graybill for the convention presidency. A Univerity of Montana graduate, Brown is a former city and county attorney. He and his wife Margaret, have five children.

—**WESTERN DISTRICT** Vice President Dorothy Eck, a Bozeman Democrat. Mrs. Eck, 47, is a former president of the Montana League of Women voters and was active in the push for constitutional revision. Listing her occupation as housewife and civic worker, Mrs. Eck has two degrees from Montana State University, where she once taught briefly and where her husband, Hugo, is a professor of architecture. The Ecks have two children.

—**SECRETARY JEAN M. BOWMAN**, a Billings Republican. Mrs. Bowman, 33, is a housewife and is active in the League of Women Voters, where she headed an in-depth study on the need for constitutional revision. Educated at the University of New Mexico and the University of Pennsylvania, Mrs. Bowman also is a member of the Yellowstone Air Pollution Control Board. She and her husband, Warren, a Billings doctor, have four children.

Jean M. Bowman
Secretary

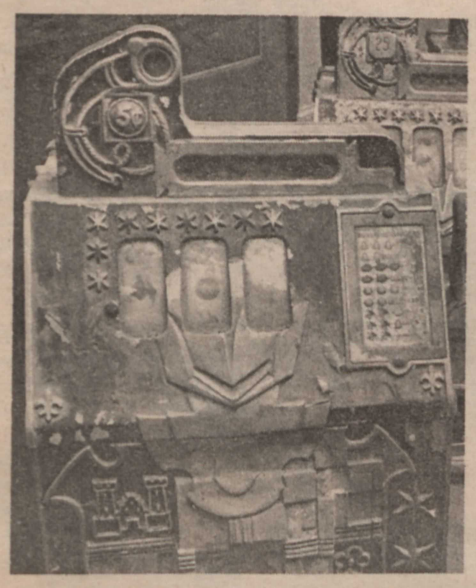
John H. Toole
First Vice President



Bruce M. Brown
Eastern V-P

Dorothy Eck
Western V-P

Gambling won't be overlooked



Lotteries are forbidden in Montana, but Thomas Jefferson used them to sell land, Benjamin Franklin to buy cannons for defense and Harvard College to raise operating funds.

The legalized gambling issue, with all its moral, philosophical and sociological overtones, cannot be avoided by convention delegates.

Their Victorian era predecessors, reflecting the views of that time, both laid down a restriction and imposed a duty on the Legislature.

"The Legislative Assembly shall have no power to authorize lotteries or gift enterprises for any purpose," the fundamental law decries. It further orders that the Legislature "shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state."

Like the participant in a shell game at an old county fair, delegates appear to have three choices.

THE CONVENTION could retain the existing language or similar words. At the other extreme it could take the unlikely course of specifically authorizing lotteries.

The middle course would be to omit any mention of gambling in a new document, thus leaving the legislature sole discretion of whether to permit gambling and, if so, what forms.

Interest in state-run lotteries has been revived recently because of governments' need for revenue and the public's resistance to high taxes, but the decision probably will hinge on the moral and social views of the delegates.

No such conflicts tugged at the consciences of the delegates of 82 years ago. To a man they believed a gambling sanction would not benefit the new state.

The modern trend toward state lotteries was begun in 1964 by New Hampshire. New York and New Jersey followed. Pennsylvania, Massachusetts and Connecticut organized lotteries late last year.

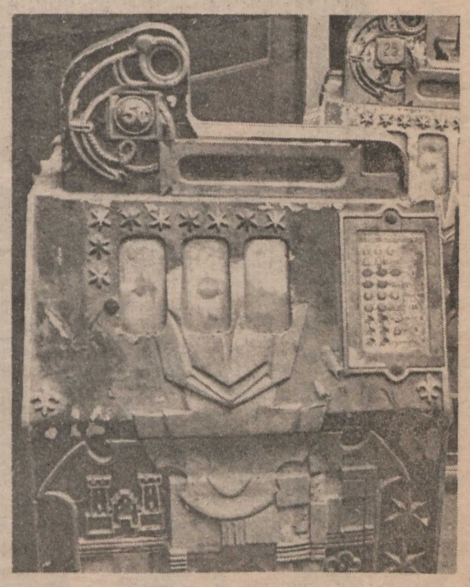
A COMMON FEATURE is that they are "sold" to the public as benefitting a special public interest, usually schools. New York and New Hampshire earmark the revenue for schools, New Jersey for schools and institutions, Pennsylvania for property tax relief and Massachusetts for aid to cities and towns.

How much revenue a lottery would return in Montana is questionable. Urban New Jersey, with 10 times Montana's population, has the most successful lottery, earning $70 million a year.

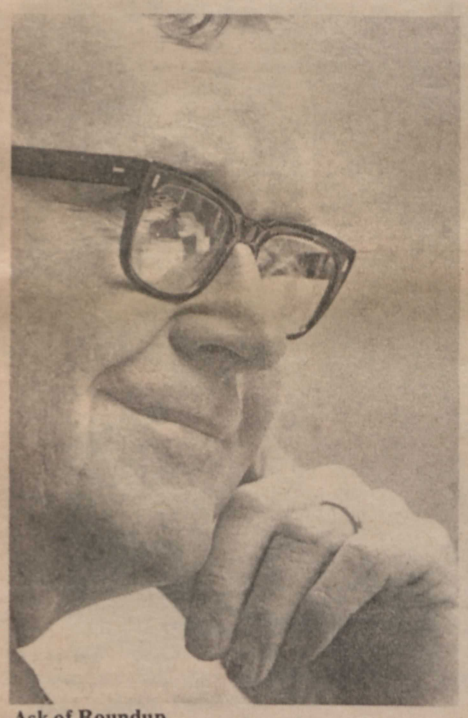
The lottery in New Hampshire, a nonurban state similar to Montana but with a third more population, yields only $2 million a year.

Montana has not ignored the trend. Every legislature since 1963 has received a proposal to repeal the antigambling section, usually accompanied by a bill to establish a state lottery or authorize bingo games and raffles by religious, fraternal and charitable groups.

A bill was passed in 1969 that would have authorized bingo and raffles but it was vetoed by Gov. Forrest H. Anderson.



More lawyers, less ranchers



Ask of Roundup

The Constitutional Convention will have plenty of legal assistance in drafting its new version of the state's fundamental law.

Of the 100 delegates, 24 are lawyers, giving the legal profession the largest representation among occupational groups. Agriculture is second with 19 delegates.

The convention's occupational makeup also includes 17 businessmen and merchants, 14 educators, 4 clergymen, 4 members of the communications media, 3 professionals, 2 bankers, 8 from miscellaneous occupations and 11 housewives. (The total of all occupations adds to more than 100 because of half a dozen delegates who are listed in two categories.)

The predominance of lawyers, farmers and ranchers in the convention compares to the large number of miners and stockmen in the 1889 convention, when the existing constitution was written.

One significant factor in the makeup of this convention, as compared to recent legislative sessions, is the decline in the number of farmers and ranchers.

As recently as 1965, before the one-man, one-vote reapportionment decision was applied to the legislature, more than 40 per cent of Montana's legislators were in agriculture, compared to 19 per cent of the convention delegates.

Only 9 per cent of the 1965 legislators were lawyers, compared to 24 per cent for the convention. The increase is probably a reflection of reapportionment and of greater interest of lawyers in rewriting the state's fundamental law.

AT LEAST ONE lawyer will serve on each of the 10 substantive committees named at the convention organization meeting Nov. 29-Dec. 1. All but one of the committees will include a farmer or rancher and all but two will include a woman.

Here are some characteristics of convention delegates:

— The average age is 50. Lucile Speer, retired University of Montana librarian is the oldest at 73 and Mae Nan Robinson, UM graduate student, is the youngest at 24. Five delegates are under 30 and eight are 65 or older.

— Nineteen of the delegates are women, compared to two women legislators in the 1971 session and one in 1969

— At least 80 of the delegates were graduated from or attended college. Many have post-graduate degrees.

— More delegates are members of the Roman Catholic Church than any other. The number of delegates affiliated with several of the churches include: Catholic 25, Presbyterian 13, Methodist 12, Lutheran 10, Episcopal 9, Congregational 8.

Although many of the delegates are new to politics, at least 42 have previously been elected to school, city and county offices and to the legislature.

EIGHT HAVE been elected to city offices. Former mayors include: Oscar Anderson, Erdmann, R.S. Hanson and Swanberg. Those who have been city council members include: Cain, Choate, Kamhoot and Payne.

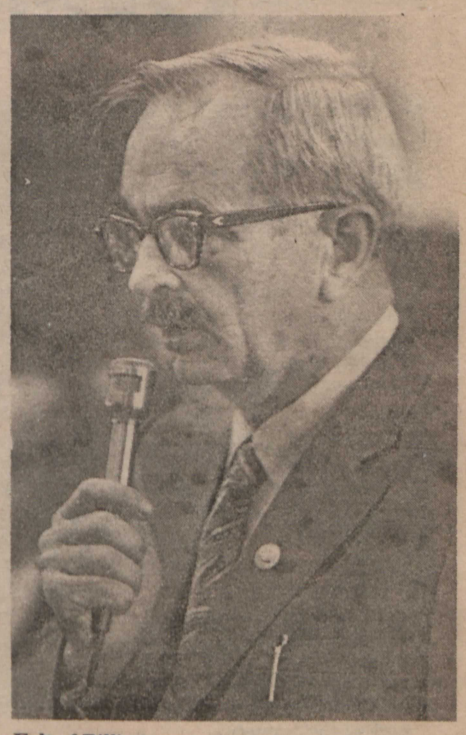
Eight have been elected to county offices: Arness, Aronow, Ask, Brown, Davis, McDonough, Delaney and Melvin.

Twelve have served on school boards: Brazier, Conover, Delaney, Garlington, Habedank, Rod Hanson, Harlow, James, McCarvel, McDonough, Noble and Siderius.

At least 18 are former legislators: Aasheim, John H. Anderson Jr., Aronow, Barnard, Berg, Drum, Eskildesen, Etchart, Felt, Harlow, Leuthold, Mahoney, Murray, Nutting, Romney, Rygg, Schiltz and Toole.

Kelleher of Billings

Lawyers Cate, Billings and Campbell, Missoula



Felt of Billings

LEGISLATURE

Overhaul, not tinkering, needed

All branches of government seem vulnerable to some tinkering during the constitutional convention, but one in particular—the legislature—may be due for a major overhaul.

Perhaps no political institution in Montana has been the subject of more citicism in recent years, by political scientists, editorial writer, citizens groups and legislators themselves.

In 1971, the Citizens Conference on State Legislatures, a national nonprofit, nonpartisan study group, ranked Montana's assembly a lowly 41st among the 50 states.

The Montana legislature, like those of many states, is trying to solve 20th century problems with 19th century structures and methods, says John Burns in "The Sometime Governments," a book setting forth the views of the citizens group.

He cites Montana as an example of a legislature whose presence is rarely felt or rarely missed: "A visitor to the Montana statehouse in the spring of 1970 would have been hard pressed to uncover any evidence that it had ever housed a state legislature. Almost a year had passed since the legislature had been in session; almost a year would pass (barring a special session) before it would be in session again."

LEGISLATORS HAVE tried, both through changing the law and modernizing internal procedures, to upgrade the work of the assembly.

For instance, lawmakers rely increasingly on interim studies by the legislative council and they have established the office of the legislative auditor.

But several of the more significant recommendations of the citizens group—annual sessions, sessions of unlimited length and single member districts, for example—would require constitutional changes.

Here are some of the pros and cons on those and other issues of the legislative article:

—STRUCTURE. The convention will decide whether to continue with a bicameral legislature or switch to a unimcameral system.

—SIZE. Under the existing apportionment plan, the legislature will have 100 representatives and 50 senators in 1973. The Montana Citizens Committee on the State Legislature, associated with the national group, has been trying for several years to reduce the legislature to about half that size to promote greater efficiency, reduce costs, reduce the workload and make longer sessions possible.

Advocates of a larger legislature say it maintains more diverse views, insures rural areas of representatives closer to home and is harder to corrupt.

—ANNUAL SESSIONS. Many contend that the work of the legislature in the modern era can't be accomplished in biennial sessions. Opponents say annual session would be too costly and are unnecessary in a sparsely populated state like Montana.

—SESSION LENGTH. Many analysts believe that the 60-day limit on sessions is unrealistic, citing the special sessions of past years. Opponents say longer sessions would only be more costly and promote procrastination.

—DISTRICTING. The citizens groups and others advocate single-member legislative districts, suggesting that a long ballot of candidates makes rational choices difficult. Voters would be able to follow the record of one legislator better than a dozen or more, they say.

Advocates of multi-member districts say the legislators represent a broader range of interests and the districts are not so vulnerable to gerrymandering. Legislators who might be reapportioned out of a job also oppose the single-member concept.

—COMPENSATION. The citizen groups advocate annual salaries for legislators, rather than pay on a daily basis. They contend that annual salaries would eliminate the need for restrictions on session length. Opponents contend that annual salaries would be costly and would tend to create a "professional" legislature as opposed to a "citizen" body.

Montana Legislature: unicameral or bicameral?

> "A visitor to the Montana statehouse in the spring of 1970 would have been hard pressed to uncover any evidence that it ever housed a state legislature. Almost a year had passed since the legislature had been in session; almost a year would pass (barring a special session) before it would be in session again. During the long interim, all office and committee rooms are occupied by legislative and executive staff agencies. The chambers are used for civil service examinations, among other things. The names on the door are changed, and the legislature disappears leaving scarcely a trace. It seems little more than a brief biennial inconvenience."
>
> —John Burns, The Sometime Governments

At least one legislative provision may be in for more than just an overhaul during the constitutional convention. Some delegates want to junk the state's two-house lawmaking vehicle for a sleek and shiny, although little-tested, one-house model.

Historically, the two-house or bicameral system developed because each house represented different interests. In England, the House of Commons represented the people and the House of Lords the nobility.

In the U.S. Congress, the House represents the people and the Senate the states. Until recently, the Montana legislature was patterned after the congressional model, with the House based on population and the Senate on geography.

BUT TWO RECENT events have increased interest in unicameralism. The first was a 1964 decision by the U.S. Supreme Court, which ruled that both houses of the legislature must be based on population.

The second was the taxation deadlock between the Republican-controlled House and the Democratic majority in the Senate during the 1971 legislature. The two special sessions and 46 extra days of haggling are still fresh memories. The 1971 session was the sixth among the past 10 in which control of the two houses has been split between the parties.

A report by the Montana Constitutional Convention Commission, written by Richard F. Bechtel, reviews both sides of the unicameral vs. bicameral issue. Here are some of the pros and cons:

—BICAMERALISTS contend that two houses act as a check on each other, guaranteeing a critical review of bills and preventing passage of hasty, ill-considered legislation. Unicameralists argue that executive veto and judicial review are more proper checks than "self-defeating" internal review. They cite studies showing that few bills receive meaningful review in the second house.

—Bicameralists believe that two houses act as a check on popular passions, thus safeguarding civil liberties. Unicameralists cite the 1917-1919 period in Montana when a bicameral legislature enacted stringent anti-sedition legislation which denied citizen rights.

—Bicameralists contend that two houses prevent corruption and dilute the effect of lobbyists because there are more legislators to bribe or influence. Unicameralists argue that when there are two houses, those who would bribe get two chances to do so, and lobbyists, who are usually trying to kill legislation, get two chances.

—BICAMERALISTS contend that two deliberations on each piece of legislation produce better laws. Unicameralists believe that one house with broad interests will write better legislation than two houses with narrower interests.

Those who favor a unicameral legislature contend that it would be more accountable, more efficient and less costly:

1. ACCOUNTABILITY. The public and the press would be able to follow legislation more easily in one house, unicameralists say. Nebraska, which has the country's only unicameral legislature, rated first in accountability in a recent study by the Citizens Conference on State Legislatures. Nebraska avoids one of the pitfalls of a bicameral assembly: decision-making out of public view. In bicameral assemblies, legislation which is passed in different forms by both houses is ironed out in a closed conference committee.

2. EFFICIENCY. Fewer bills would be introduced in a unicameral legislature and the end-of-session logjams would be avoided (Nebraska's legislative activity peaks in mid-session), unicameralists contend. With fewer bills to consider, those introduced could be given more study.

3. ECONOMY. A unicameral legislature probably would have fewer members, saving money which could be used for better research and legislative facilities. Unicameralists suggest that would make the legislature less dependent on the executive branch and lobbyists.

If a unicameral proposal results in a sharp reduction in the 150-member legislature, opposition can be expected from rural delegates who represent sparsely-populated areas already suffering from loss of legislators under "one-man, one-vote" rulings.

On the other hand, unicameralists have one thing going for them: the convention itself is a unicameral body.

The convention has authority to put controversial questions to a separate vote of the people, to avoid endangering the entire new constitution because of one provision. If a unicameral legislature has wide support among delegates, the issue is a likely candidate for a separate referendum.

'Pressure cooker'

Directors of one of Montana's biggest "business" enterprises—state government—meet every other year in what one political scientist describes as a "60-day pressure cooker."

The biennial sessions of the legislature and the 60-day time limit on sessions are two constitutional restrictions often criticized by legislative reformers. The Citizens Conference on State Legislatures found in a national survey that time restrictions are the "most crippling and most critical" problems legislatures face: "Major legislation—because it is complex and controversial—is left until the very end, when it is dealt with in a mad rush."

NOT ALL AGREE, of course. Some familiar with the legislative process, including a significant number of legislators, believe that annual sessions would be too costly and longer or unlimited sessions would invite procrastination.

All but one of the original 13 states began with annual sessions. But, according to a report by the Monana Constitutional Convention Commission, confidence in legislatures eroded in the mid-19th century when railroads and other corporate interests began to dominate and corrupt the law-making bodies. Montana's Constitution was written in 1889, during that period of distrust.

Now, however, the opinion of many students of the legislative process has shifted in favor of annual sessions, the report says. As recently as 1948, only six state legislatures met every year. By 1971, there were 33 assemblies meeting annually.

THE GREATEST objections to annual sessions come from those who fear too much government and who think yearly sessions would be too costly, the report says.

Advocates of biennial sessions also contend that legislative proposals receive closer consideration if they cannot be repealed for two years, that biennial sessions are better for legislators who are busy citizens, that the time between sessions is better spent on interim studies and that fewer sessions guarantee greater public attention on the assembly when it does meet.

Those favoring annual sessions contend that in an era of rapid change, it is necessary for the state's lawmakers to meet more than once every two years. They point out that the 1890 legislature appropriated only $187,000 for one year compared to the $296,000,000 the 1971 legislature appropriated for this year.

Advocates of annual sessions also contend that frequent meetings are necessary to restore the balance of power between the legislature and the executive branch, that budgeting several years in advance is difficult and that infrequent meetings make the legislature dependent on lobbyists.

Thirty states still limit the length of legislative sessions, and four others cut off legislators' pay after a certain number of days.

Opponents of unlimited or longer sessions cite many of the same arguments used in opposition to annual sessions. They also contend that the public is better able to follow the action during a session of limited length and argue that longer sessions might discourage participation of some legislators, particularly farmers and ranchers, who now have the time to spend alternate winters in Helena.

EXECUTIVE

Who's the captain?

Gov. Forrest Anderson — Lt. Gov. Judge

In theory, the governor is the captain of the Ship of State, but in practice he can't pull rank on a half dozen of the mates.

Although drafters of the 1889 constitution vested the governor with the "supreme executive power," they provided for six other elected officials who are responsible, not to the governor, but to the voters. They are the lieutenant governor, attorney general, secretary of state, state treasurer, state auditor and superintendent of public instruction.

This "plural executive" has been criticized in numerous studies and articles over the years. Typical of the criticisms of the plural executive is one by Richard B. Roeder, associate professor of history of Montana State University and a delegate to the 1972 convention.

Writing in the winter issue of the Montana Law Review, Roeder said: "The fragmented, plural executive diffuses power but not responsibility. The testimony is almost universal that the people hold the governor responsible for the course of action."

On the other hand, some legislators expressed fears during the 1971 session that the governor is becoming too powerful because of the executive reorganization legislation enacted during the session.

THE QUESTION of whether to make the governor all powerful in the executive branch will be one of the major decisions to be made by this year's Constitutional Convention and, ultimately, by the voters.

Critics of the existing system argue for a "short ballot," with the governor and lieutenant governor running as a team, and the governor naming his own cabinet of state officials.

In addition to the elected officials, the 1889 convention gave constitutional status to 10 other state agencies, including seven boards and commissions. State legislators added additional semi-autonomous boards over the years.

REORGANIZATION of the executive branch consolidated 161 executive agencies into 19 major departments. But only statutory boards were affected: the constitutional boards remain.

Elimination of those boards and some elected offices would extend executive reorganization by making the governor even more powerful.

Roeder is one who is opposed to government by committee: "Administration by boards and commissions may have sufficed at a time when the functions of state government were simple and relatively inexpensive; when it was possible for the Board of Examiners to gather around a table and personally examine claims against the state. But state government was not destined to remain so simple."

According to a report by the Montana Constitutional Convention Commission, the most significant argument of those favoring the short ballot is that it would make the governor directly accountable to the people.

The short ballot also would reduce voter confusion at the polls and would make the governor the undisputed boss, thereby increasing administrative efficiency, proponents says.

According to the commission report, those favoring a long ballot of elected officials argue that the governor could become too powerful.

They also contend that responsibility in government is best achieved by popular election of state officials, that election increases the prestige and respect for the offices, that the lesser offices are training grounds for young politicians and that gubernatorial appointments might be influenced by "political" considerations.

The convention's decision on the power of the governor probably will be affected by a similar decision about the power of the legislature, because each branch acts as a check on the other.

"Let us nominate and elect the chief executive of the state, then give him full power to name his assistants in administering the various departments of the state government, and we will know exactly where to place our finger in locating blame or praise."

—Gov. Joseph M. Dixon, 1921

Stephenson, Treasurer — Colburg, Supt. of Schools — Murray, Sec. of State — Woodahl, Atty. Gen. — Judge, Lt. Gov.

Beefing up the governorship

The Constitutional Convention may consider electing future Montana governors in other than Presidential election years to prevent national issues from obscuring state politics.

The timing of the gubernatorial election is one of half a dozen lesser executive branch issues to be considered, along with the important decision of gubernatorial power.

Gubernatorial succession, veto power, length of term and qualifications are among the other issues, along with consideration of the powers and duties of the lieutenant governor.

SOME ANALYSTS believe that a popular Presidential candidate may sweep a governor of the same party into office, regardless of qualification. (A popular governor also might help the Presidential ticket.)

In 12 of 20 elections since statehood, Montana voters have given support to presidential and gubernatorial condidates of the same party.

But in the two most recent elections, voters have split their tickets going for a Democrat for President and Republican for governor in 1964 and a Republican for President and Democrat for governor in 1968.

But those favoring election of the governor in non-Presidential years also argue that the practice would focus public attention on state issues and thereby strengthen state government.

Opponents of the off-year gubernatorial election contend that voter turnout is much larger in Presidential election years, thus giving the governor a clearer mandate.

Some of the other executive issues are outlined in a report prepared by the Montana Constitutional Convention Commission, and written by research analyst Karen Beck:

—SUCCESSION. The constitution now provides that the lieutenant governor, president pro tempore of the Senate and speaker of the House, in that order, shall succeed the governor. But it does not set forth procedures for determining gubernatorial disability. Some also question whether legislators —chosen from one district rather than the whole state— should be in the line of succession.

—VETO POWER Montana's governor has the power to veto state and federal constitutional amendments approved by the legislature. Some believe the amendment process is a "constituent" function shared by the legislature and the voters and one in which the governor has no place.

—TERM OF OFFICE. About one-fifth of the states limit governors to two-year terms. Montana is in the majority with a four-year term, which is in accord with the trend to strengthening gubernatorial power. Some want the governor to take office in Decembber, after the November election, rather than January. They contend it would give the new executive more time to prepare for convening of the legislature in January.

—QUALIFICATION. Montana's governor must now be 30 years old and a two-year resident of the state. Some argue that any eligible voter should be able to run for office, meaning an 18-year-old could serve if he could get elected.

—LIEUTENANT GOVERNOR. Under the existing constitution, the lieutenant governor has only two duties; presiding over the Senate and, if necessary, succeeding the governor. He can be, and in the past has been, of a different party than the governor. Some think the lieutenant governor should become an "assistant governor," and that he should be elected with the governor as part of a team.

Justice, but what quality?

Critics of Montana's judicial system say increased demands of justice in this complex age are causing cracks in the 82-year-old court structure designed for a frontier society.

Judicial architects raise two key questions that they feel illustrate weaknesses in the administration of justice in the state:

—Does the present method of electing judges on a nonpartisan ticket provide qualified jurists independent of economic and political pressure?

—**ARE CITIZENS** assured of receiving the same quality of justice in all the courts of the state?

Delegates considering these problems will have the benefit of research done by the Citizens' Conference on the Montana Judicial System. Its five-year study has resulted in the Montana Plan for court reform.

The plan follows the modern thrust of judicial reform, which is for a unified court under centralized administration staffed by judges who are chosen and retained on merit.

Montana's three-tiered system consists of a court of appeals (the Supreme Court), general trial courts (the district courts) and inferior courts (justice of the peace and police courts).

Studies of this system conclude that it is fragmented and suffers from duplication of effort and artificial divisions of authority between the high court, the 18 district courts with 28 divisions and the more than 200 lower courts.

THE MONTANA PLAN proposes a two-tier system. There would be an appellate level (the Supreme Court) and a general trial level (the district courts).

JP and police courts would be eliminated and their functions incorporated in the district courts. The lower level courts would operate as divisions of the district court staffed by magistrates appointed by the district judges.

Criticism of the court structure has centered on the inferior courts. "The type and quality of justice presently being provided in these courts could be materially improved by adoption of a uniform court system which would provide a district court level of judicial quality for all legal proceedings," was the concensus reached by the citizens' committee.

The Montana Plan proposal is for creation of a nonpartisan nominating committee with a majority of laymen which would screen candidates and submit a list of prospective nominees for a judicial vacancy to the governor. The governor would have to make his appointment from the list.

The appointed judge would be required to run at intervals against his record in a nonpartisan uncontested election.

Critics of this plan argue it is undemocratic because it removes direct control of the judiciary from the people.

Supporters of the merit system contend Montana, in effect, already has an appointive system. Four of the five Supreme Court justices and 20 of the 28 district judges were initially appointed and only two incumbent judges have been defeated in an election.

THE PROPOSAL also creates a research and qualifications committee with power to investigate complaints against judges and bring charges before the Supreme Court. The appeal court would try the charges and could order censure, retirement or removal.

The plan would give wide authority to the Supreme Court which would be responsible for administration of all courts and would have the authority to make rules of practice and procedure. Some authorities feel procedural rules should be left to the legislature because substantive issues may be involved.

The citizens plan recommends appointment instead of election of the clerk of the Supreme Court and district court clerks.

The plan would leave tenure and salaries of judges to the legislature. Judges are strongly opposed to asking the legislature every two years for a salary increase and have asked for a pay commission to set salaries that would be ratified by the legislature.

Who needs justice of peace courts?

JUDICIARY

Justice of the peace courts are termed inferior courts because they are the lowest level of jurisdiction, but critics complain inferior too often describes the quality of justice dispensed there.

Justices of the peace (JPs), a relic of medieval England, came to Montana with territorial status in 1864 and were given contitutional recognition with statehood in 1889.

The lower courts have become targets of judicial reformers, but attempts to abolish their constitutional status and improve them through legislation have failed. The voters in 1962 narrowly rejected such a proposal by 1,000 votes. Now the Constitutional Convention offers another chance at reform.

THE REFORM being proposed in the Montana Plan of the Citizens' Conference on the Montana Judicial System is to establish one level of trial court jurisdiction in the state. JP courts would be eliminated and their functions taken over by district courts.

Matters now brought before JP courts would be handled by divisions of district courts. The district judges would assign magistrates to hear misdemeanors, small claims and minor disputes. The magistrates would be lawyers if possible, but trained laymen could be appointed if no lawyer were available.

Critics find a number of faults with the existing JP courts:

—**JPs ARE NOT** required to be lawyers. All but a handful have no legal training and are unable to understand the complexities of the law.

—Most of the justices, 85 per cent, are paid fees instead of a salary and that compromises their independence and subjects them to economic pressures.

—They are elected on partisan tickets which leaves them subject to political pressures.

—Less than 30 per cent of the justices are provided with adequate courtrooms. The majority hold court in unsuitable quarters lacking in judicial dignity and decorum.

However, the lower courts have many defenders who point out the necessity of an easily available, informal and inexpensive court to handle misdemeanors and small claims without the need to hire attorneys.

Such courts, they say, fill a real need in rural Montana where distances are long, populations scattered and judges and lawyers not always handy.

Those who support JP courts argue that if justices are given periodic legal training and paid an adequate salary instead of fees, the inferior courts could serve their function of a "common man's court."

THEY CONTEND that elevating the lower courts to the district court level would be too expensive, give too much power to district judges and create a district court bureaucracy.

The reformers answer that the present system of more than 200 JP and police courts is cumbersome, inefficient and expensive. They argue the $250,000-a-year cost of lower courts would pay the salaries of 15 additional district judges.

The critics say the JPs—and the defendants—are at a disadvantage because county attorneys are lawyers and law enforcement officers often know more about their special field of law than the JPs.

How Montana judges are selected

A popular comedy routine begins with "here come 'de judge," but one of the most serious questions facing delegates is how the judge got there.

The method by which judges are chosen is vital because the best court organization the convention can devise will fail with poor personnel.

The issue boils down to retaining the existing election of judges, substituting appointment of judges or combining both features in a merit selection plan.

MERIT SELECTION, better known as the Missouri plan or the appointive-elective system, is proposed in the Montana Plan developed by the Citizens Conference on the Montana Judicial System.

The Montana Plan would establish a nonpartisan judicial council composed equally of laymen, attorneys and judges. From this council a nominating committee would be appointed with a majority of laymen and minority of lawyers. Judges could not serve on the nominating committee.

This committee would select a number of qualified nominees for each judicial vacancy and submit the list to the governor, who would have to make the appointment from the list.

THE APPOINTEE would serve a term fixed by statute and then would be required to run against his record in an uncontested election. The question before the voters would be whether the judge's record merited keeping him in office.

Critics of this method argue that it is undemocratic because citizens should have the right to directly choose their judges. Strong feeling exists in Montana for election of judges, the system fixed in the constitution since 1889 statehood.

Partisan judicial elections were changed to nonpartisan in 1935 to eliminate political excesses but the pros and cons of elective vs. appointive judges are substantially the same for nonpartisan as for partisan elections.

The choice between an elected and appointed judiciary is a difficult one, authorities agree, because a balance must be struck between the apparently inconsistent goals of an independent judiciary and popular control of the judiciary.

ELECTION IS the method in 32 states, 17 with partisan elections and 15, including Montana, with nonpartisan elections.

Fourteen states provide for appointment by the governor or legislatuare.

Another 14 states have adopted some form of merit selection. (The totals do not add to 50 because some states use more than one method.)

Those favoring election of judges contend politics can never be entirely eliminated and merit selection simply substitutes bar association politics, far removed from the people, for partisan politics.

Election, they say, prevents the judiciary from imposing political, social and economic policies contrary to the views of the majority. They argue it will assure judges will be chosen who represent ethnic, religious and racial groups in the society, and who can deal most effectively with the legal problems of ordinary persons.

Critics of judicial election say it substitutes popularity for quality. These opponents say voters are generally unaware of the candidates' qualifications and cannot vote intelligently.

Opponents of election say it compromises the independence of the judiciary in its role of the protector of the minorities' rights. Popular election is necessary for the policy making executive and legislative branches but the judiciary is unique because judges are sworn not to give preference to one policy over another, they say.

Money strait-jacket: can cords be cut?

TAXATION

The constitutional convention offers an opportunity to cut the cords of the financial straitjacket in which the 1889 framers clothed the legislature.

Rigid constitutional taxation provisions prevent the state from responding to rapidly changing social and economic needs by denying needed flexibility, says a report by researcher Roger A. Barber for the Constitution Convention Commission.

THAT FLEXIBILITY lies in the legislature, and the taxation and revenue article adopted by the convention will reveal much about its faith in representative government.

Drafters of the 1889 document had little faith in legislatures—with some good reason. The result was a tax and revenue article which students of constitutions find wordy, complex, confusing, ambiguous and littered with statutory law.

Constitutional authorities hold that a state's right to tax is an inherent power. Therefore, they say, any constitutional provision on taxation is either redundant or serves only as a limit on action by the state.

An example would be a clause forbidding the legislature to enact a sales tax, thereby stripping the lawmakers of any discretion in that particular tax.

The basic question before the delegates in tax matters is just what restrictions should be placed on the taxing authority of their elected representatives.

A constitution could remain silent on taxation and leave total discretion with the legislature, but it is doubtful Montana voters would accept a government completely unchecked in its powers of taxation.

VARIOUS STUDIES concur that an adequate revenue and taxation article should give the legislature a general grant of authority to determine methods and rates of taxation; require equality and uniformity in assessments; provide taxes should be collected only for public purposes, paid into the state treasury and paid out only by appropriation under law; grant tax exemptions for government, educational, religious and charitable purposes, and fix a reasonable debt limit that could not be exceeded without a vote of the people.

One controversial provision that will receive detailed attention is the special tax treatment given mining property.

Delegates also must decide whether to continue an existing provision specifying that highway tax revenue can be used only to build and maintain highways and a provision reserving a portion of income tax revenue solely for education.

Another section expected to provoke lively debate prohibits lotteries in the state.

Trickle of state aid

Montana's local governments hope to squeeze their way into the state tax collector's watering trough with a few wording changes in the constitution.

Prohibited by the 1889 Constitution from sharing the wealth collected each year by state taxes, local government has had to rely mainly on the property tax—and often has suffered the brunt of the so-called "taxpayers revolt," according to a Con-Con Commission report.

Although the state has found a few loopholes—notably sharing "license" tax fees with local government—in general the state aid is barely a trickle.

THE COMMISSION report on local government says that in 1969 Montana's state aid to local government amounted to only $5.98 per person compared to a national average of $49.33 per person. Only three states provided less than the Treasure State.

"Another alternative—authorizing local governments to levy major taxes other than property taxes—simply has not been used in Montana," the report notes.

Giving local government a share of state taxes (or a chance to at least compete with other agencies for them) would take only a few constitutional words, but delegates are likely to consider the over-all question of local government's taxing powers, too.

At one extreme, delegates could impose severe constitutional limitations on local government's power to tax.

A MORE MIDDLE approach—the one generally followed by the 1889 Constitution—lets the legislature decide what taxes local government can levy. So far, however, the legislature has been reluctant to authorize anything but the property tax.

A newer "home rule" approach would constitutionally grant local government the power to levy whatever kind or amount of taxes it wishes—except for those forms specifically denied by the legislature.

Another financial limitation imposed on local government by the constitution is the general debt limit of five per cent of assessed valuation.

Most local government reformers believe debt limits should not be frozen into the constitution, but many states continue to do so, the report notes.

Many local governments are able to exceed their bonded debt limit by use of revenue bonds—which the courts have ruled don't count against the limit.

Besides the debt limit, counties must get voter approval before incurring a debt of $10,000 or more—an amount most studies agree is unrealistic in days of inflation.

That highway fund

Engineers of a new constitution must weigh strong public pressures in considering whether good roads should continue to be set in the concrete of constitutional principle.

One of the better known provisions of the state's horse and buggy age constitution is the anti-diversion amendment, added by the voters in 1956 by a better than 3-1 majority. It specifices that revenue from highway fuel taxes and vehicle fees can only be used to build, repair, maintain and promote highways.

THIS INCOME has amounted to $37 million a year recently and with federal matching money the fund is around $110 million annually.

The inviolate fund is a major part of a larger question facing the delegates, that of earmarking — dedicating a particular tax to finance a special function. Montana earmarks 53 per cent of its revenue with highways and education the major beneficiaries.

Recent tax and finance studies tend to discredit earmarking, especially if frozen in a constitution, as an inefficient and inflexible method of allocating the state's resources.

SUPPORTERS DEFEND earmarking as assuring a definite level of spending for a desired service and providing stability and continuity in financing that service. The Legislature Council's 1968 study of the constitution recommended repeal of the highway amendment, but a subcommittee of the 1970 Constitution Revision Commission urged that it be retained because it is so popular.

The constitutionally insulated highway fund is zealously guarded by a powerful lobby of vested economic interests including vehicle manufacturers and dealers, oil companies, construction firms and their suppliers and motorists' associations.

A case can be made that an extensive network of good roads is in the public interest as vital to a state of vast distances and sparse population like Montana.

Oponents of the amendment argue that if a well funded highway system is in the public interest, this can be accomplished by legislative enactment without any need for a constitutional mandate.

Mining: a 'tax special'

MINING

Development of mineral wealth brought settlers to the Montana Territory in numbers enough to create a state, and the mining-dominated delegates who wrote its Constitution didn't forget the favor.

They wrote an uncommon section which was, in effect, a form of property tax exemption under which mining claims and mines are valued differently from other property.

"Mines are the only form of property in the state with a constitutionally prescribed taxation system," explains a Constitution Convention Commission report.

THAT REPORT SAYS the central question before the convention is whether one method for taxing mining property should be frozen in the Constitution, or whether the legislature should be free to develop whatever method of mineral taxation it wishes.

The weight of modern constitutional thought is that a special tax situation has no place in a document of fundamental principles; not because it benefits a special interest, is a tax break or is even undesireable, but because its nature is statutory.

Studies by the Legislative Council and a subcommittee of the 1970 Montana Convention Commission recommend its deletion.

THE "TAX BREAK" given mines in 1889 by the 75 delegates—about half of whom were associated with the mining industry—was to limit valuation of the land to the minimal price originally paid the United States for the claim, regardless of how valuable it might become.

The constitution further directed the legislature to tax mineral wealth on its net proceeds, the value after deduction of all the costs of recovery including labor, supplies, capital improvements and depreciation.

The opponents in 1889, mostly agrarian interests, conceded the inherent difficulty in accurately assessing the value of a mineral deposit in the ground, its extent unknown.

But they argued the mineral wealth either should be taxed on its gross earnings or the determination left to the legislature.

Stories of power politics and conspiracies surround the provision. The latest historical studies discount a conspiracy although the special privilege is evident.

(The present-day Anaconda Co. was not involved in 1889. Its birth lay a decade in the future when the Standard Oil Trust in 1898-99 purchased Marcus Daly's Butte interests and formed the Amalgamated Copper Co.)

JOHN W. SMURR in his article, "The Montana Tax 'Conspiracy' of 1889," in "Montana, The Magazine of Western History," concludes there was no conspiracy because no conspiracy was necessary.

Smurr says preferential tax treatment was only logical for the industry that was the economic backbone of the territory and would continue as a significant economic prop of the new state.

Mines had been accorded special tax treatment from the first days of mining in the territory. The Bannack statutes of 1864-65 exempted claims from property taxation but not machinery. The 1889 provision was lifted from the 1884 Constitution written by the same mining interests.

"While adopted primarily to benefit the mining industry, its purpose was not to exempt such property from taxation," writes Harold V. Dye, University of Montana law student, in the Montana Law Review. "It is apparent that it is in fact a revenue measure.

"But perhaps the most damning feature is that it is in the Constitution at all," Dye says. "Even if it were perfect that would be no reason to immortalize it in the stone of constitutional mandate."

THE CONTROVERSY continued when it was discovered the mining industry was not paying a fair tax share under its constitutional mantle. It led to the approval in 1924 of an initiative establishing the metal mines license tax—a tax on gross proceeds.

That an initiative was required to change the method of mine taxation points up again the central question of whether a special tax treatment belongs in a constitution.

Church-state entanglement

PAROCHAID

Advocates of aid to parochial education and those who oppose it in any form will joust in the Constitutional Convention arena.

The battle has been waged in many states recently, but usually in the courts and legislatures. Montana's convention has the opportunity, within limits of the federal Constitution, to chart the future course in this state.

If the debate results in controversy, as it often does, the convention may choose to submit the question to the voters as a separate item when they vote on the new constitution.

At least 27 states now provide aid—such as busing, textbooks, hot lunches and health care—to children attending parochial schools, according to a report by the Montana Constitutional Convention Commission.

MONTANA IS ONE of the exceptions and at least part of the reason is the rather strict language of the state's 82-year-old constitution, which forbids public aid "directly or indirectly" to church schools.

The Montana Catholic Conference plans to ask the convention for a change based on the broader provisions of the U.S. Constitution: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The federal Constitution prohibits "unsound entanglement" of Church and State, but the Montana constitution is ever more strict and denies possible federal benefits to children of the state, the Catholic Conference says.

IN UPHOLDING limited parochial aid, such as busing of students and loaning of textbooks, the U.S. Supreme Court has based its decisions on the theory that the aid benefits the child, not his school or his religion.

But in its most important recent decision on parochial aid, the court ruled out programs in Pennsylvania and Rhode Island as involving "excessive entanglement" of church and state. Two major attempts have been made in Montana in recent years to gain parochial aid:

The Montana Association of Non-public Schools, which included Catholics and Lutherans, asked the 1969 legislature to appropriate $3 million for parochial aid. The legislature rejected the request, and shortly after that the Catholic high school in Helena and Catholic elementary schools in Butte announced plans to close. (Convention delegate Jerome T. Loendorf of Helena was lobbyist for the group seeking the parochial aid.)

—DEER LODGE COUNTY approved a levy in 1969 providing public funds for salaries for lay teachers at a Catholic high school in Anaconda. The State Supreme Court ruled the levy contrary to the Montana Constitution. The approach probably is also contrary to the U.S. Constitution, under the recent U.S. Supreme Court ruling, the commission report says.

The decision for convention delegates appears to be a choice between (1) retaining a restrictive provision ruling out all parochial aid, (2) adopting a broad provision which would permit limited, indirect aid.

Most of the parochial students in the state attend Catholic schools. More than 8,700 students, almost 5 per cent of the state's enrollment, attend the 11 high schools and 31 elementary schools run by the Catholic Church.

At least 25 of the 100 convention delegates are Catholics.

The commission report says the following arguments are used by those favoring parochial aid:

1. Twenty-seven states already provide some aid for parochial schools, including busing, textbooks, lunches and health care.

2. Parents with children in parochial schools have to pay tuition to those schools and taxes to support the public schools, a double burden.

3. Costs of public education are decreased because of the students attending the parochial schools.

4. Parents should enjoy freedom of choice in educating their children, but the cost of a parochial education could become too much of a burden to exercise that freedom.

Arguments often used against parochial aid:

1. Any aid, even indirect, violates church-state separation.

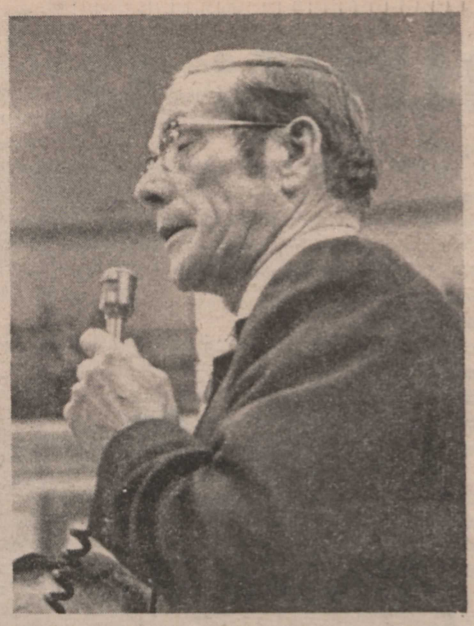
2. Aid can "polarize" the nation and threaten the quality of public schools.

3. State aid will lead to state control over parochial schools.

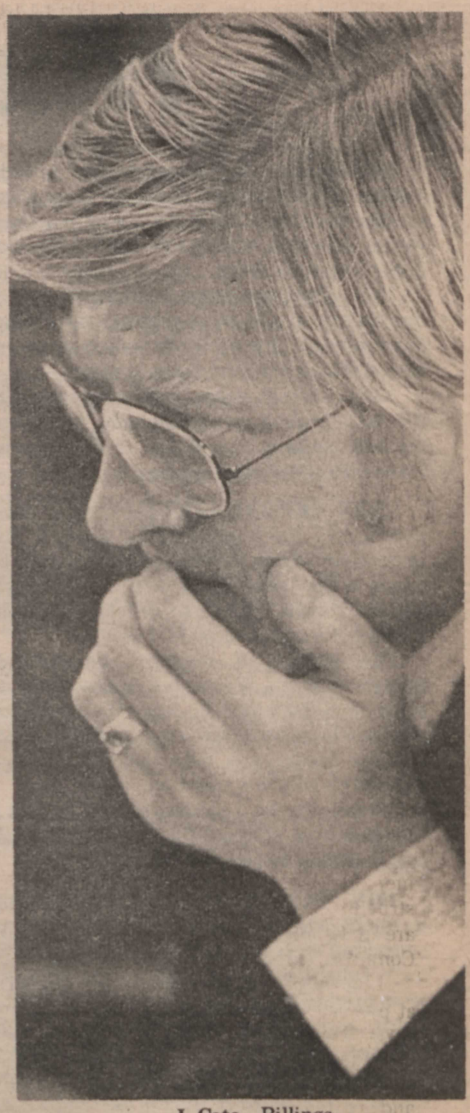
4. The public school system is the backbone of education and should be the primary concern of the state.

C. Mahoney—Clancy

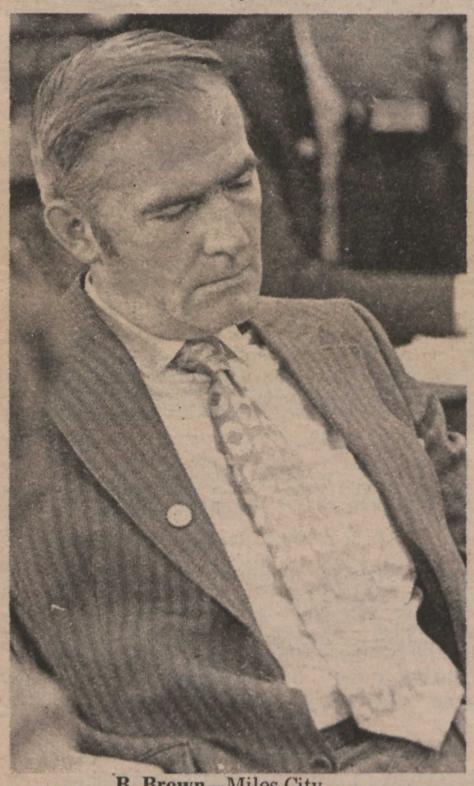
D. Bugbee—Missoula



M. Aasheim—Antelope



J. Cate—Billings



B. Brown—Miles City

Thousands of words build governments

If a constitution were nothing more than a few thousand words scrawled on a parchment, Montana's Constitutional Convention would be a waste of time and money.

But those words build governments. Those words are the fundamental law of the land and reflect the desires of the people. And that makes them pretty important words.

Constitutions tell us what type of government we'll have, how it will be conducted and how it will affect us. Through guarantees of our rights, constitutions protect us from government.

Since 1889, when Montana wrote its third constitution and became a state, those words have served as our basic framework. But in recent years, a growing number of critics have contended that the framework wasn't holding up as it should. Too often, they said, Montana's 82-year-old constitution prevented state and local government from providing the services people want.

THE PEOPLE finally decided it was time to see if new words could bring better government. By a direct vote in 1970, the people called for a constitutional convention.

Constitutional conventions are strange creatures. In many respects they are the most powerful institution in a state because they are working with the highest law; the convention is limited by only a few minor provisions imposed by the U.S. Constitution and the federal law which enabled Montana to become a state.

Yet few governmental institutions are as accountable to the people. The opening phrase of Montana's Constitution—"We, the people"—is more than window dressing.

It took a direct vote of the people to call the convention, and it will take a direct vote of the people to approve any work the 1971-72 Constitutional Convention does—from a minor word change to a major word change which restructures government.

"THE CLAUSE, 'We, the people,' best represents the task of the convention," says Dale A. Harris, executive director of the Constitutional Convention Commission staff. "It is to act as agent of the people to write the fundamental law of the state."

While the ideal state constitution may be unattainable, constitutional scholars emphasize that the best constitutions are brief, simple statements of the fundamental, enduring principles of government.

The details of how those principles should work, however, should be left to the lawmakers to put in the statutory code books. Statutory law, they say, has no place in a constitution.

THE RATIONALE is that statutory law which can be changed easily without time-consuming amendment processes and ratification votes, should provide for detail and transitory provisions (like salaries) likely to be changed from time to time. Broad fundamentals not likely to change regularly should in theory go in the constitution, which is difficult to change.

"The most obvious, and in many ways crucial, fault of state constitutions is that they are too detailed," says constitutional law expert David Fellman of the University of Wisconsin. "They simply say far too much on too many subjects."

Montana's constitution with an estimated 22,000 words falls far short of Louisiana's 253,000-word tome. The Montana Constitution ranks 20th in length but is still more than three times as long as the federal constitution.

However, brevity has its limitations, too, especially in the area of constitutional rights, where an omission could cost the people an important protection. Delegates also could use brevity and fundamentalism as excuses for avoiding controversy.

What is important, the scholars agree, is to choose words carefully, because in a constitution words build governments, not just for the day but the future.

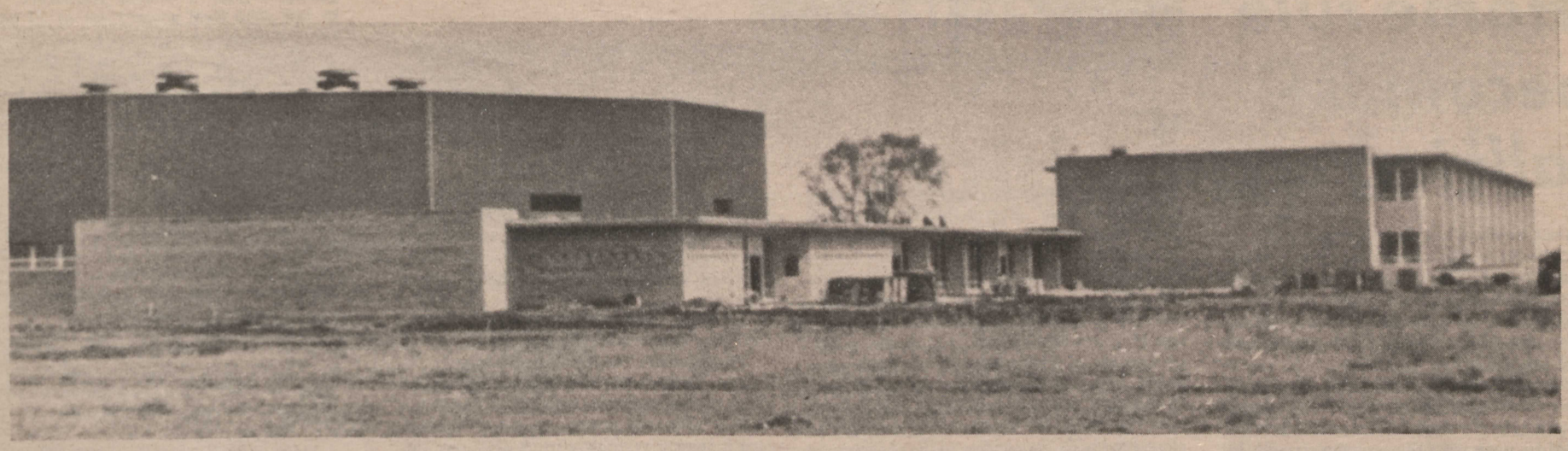
C. Pemberton—Broadus

J. Leuthold—Molt

N. Furlong—Kalispell

G. Heliker—Missoula

J. Anderson—Alder



Who should govern education?

Constitutional Convention delegates deserve all A's if they find a way to help solve modern education's uncertain future

The convention is an opportunity to examine basic goals and to provide an educational structure compatible with the changes which are inevitable, the Constitutional Convention Commission report says.

Innovations "which may seem unrealistic at present will not be tomorrow," the report says, "With rapidly changing technology and attitudes. the possibilities for new styles and structures in education are becoming greater and greater.

The first question facing delegates is how detailed the educational article should be. Many constitutional scholars suggest it should merely impose a duty to provide education and leave mechanics and specifics to the legislature.

If delegates opt for more constitutional detail, they'll be slappped with several specific issues concerning the structure of education.

AN IMPORTANT question regardless of which route they follow is philosophical: Who should govern education and at what level?

Traditionally, the people have the ultimate power over education, but in recent years professional educators have become increasingly important as education has grown more centralized.

The issues revolves around centralization versus decentralization, universality versus local control.

In Montana, the state has formal authority over education, but through laws local districts have a great deal of control, especially over finances and district boundaries. But with increased federal activity in the education field, the trend is toward centralization.

Arguments for centralization, according to the report, are efficiency, better financial posture, equality of education and ability to cope with rapid change.

Arguments for decentralization include greater public control, local involvement, flexibility, financial independence and removal of education from politics and bureaucracy.

HIGHER EDUCATION poses another issue, and the outcome could affect how much control the legislature and governor will have over colleges and universities.

With a broad educational provision, colleges and universities might not be mentioned at all. But many persons contend that higher education has special status and independence which must be protected in the constitution.

Even with constitutional status, the university system could range anywhere from being a total creature of the legislature to being almost completely free from outside control. Delegates could strengthen higher education by providing it with a separate board of regents and giving it corporate powers.

MONTANA IS one of two states with a single board of education to set policy for both the elementary and secondaary schools and colleges and universities. The question arises whether the state should continue with one board or have two. Or even three, because of the rapid growth of post-secondary vocational programs.

Another question involves the state superintendent of public instruction, an elected official who heads the state's education department, sits on the Board of Education and yet is subordinate to that board. If the position is given constitutional status, delegates may want to redefine its role.

Another likely issue is the question of election versus appointment of the superintendent of public instruction and the board (s) of education. Presently, the board is appointed and the superintendent elected.

Proponents of election say it gives the people a greater voice in operating schools, while those favoring appointment argue it strengthens the executive branch and brings greater professionalism. Neither election nor appointment would necessarily eliminate politics, according to educators.

EDUCATION

Public lands and schools

The 19th Century land grants for schools could give Constitutional Convention delegates 20th Century headaches when they start to unravel the tangled "Montana Trust and Legacy Fund."

The end result could be a whittled down constitutional provision for school lands and elimination entirely of constitutional articles dealing with public lands and the Trust and Legacy Fund.

In 1889, when Montana became a state, the federal government granted the state two sections of land in each 36-section township with the requirement they be used to support the public schools.

FOLLOWING DICTATES of the federal enabling act, the Montana Constitution provided for administration of all public lands, including the school lands, and set up a permanent school fund with income from sale or lease of the school lands.

In 1924, a constitutional amendment combined three new, separate funds into a creature called the Trust and Legacy Fund. Later the school land fund was added, too. The idea apparently was to set up a uniform state investment program, according to a Constitutional Convention Commission research report by Roger Barber.

Today, almost 90 per cent of the $59 million in the Trust and Legacy Fund is from the Public School Fund. Public schools get 95 per cent of the yearly interest and income from the school lands; the remaining five per cent is returned to the fund or used for land development.

IRONICALLY, the other three funds set up under the legacy fund—accounts for the state, schools (different from the school land fund) and the university system—were never used because outrageously unrealistic provisions prohibited use of any interest until the funds reached levels of $100 million or in one case $500 million. And the intent of the amendment—uniform investment—didn't come until passage of a 1971 law, according to the report.

Studies by the Montana Legislative Council and Montana Constitutional Revision Commission concluded that many of the provisions for public lands and the Trust and Legacy Fund are statutory and would be better off in the lawbooks.

You'll know your representative better

In recent survey in the Billings area, only two of 136 persons correctly identified all of their legislators from a list of names.

Yellowstone County elects 12 representatives and six senators, so the results of the survey are not surprising. But they do furnish ammunition to proponents of single-member districts.

Under the single-member concept, Yellowstone County, and all others, would be divided into smaller districts, so that each voter would cast a ballot for only one representative and one senator (or, if the legislature is unicameral, for one legislator).

THE CITIZENS Conference on State Legislatures, a national study group, is one of the major supporters of the single-member concept. Such districting facilitates "clear identification between legislators and their constituents, a direct tie between each legislator and each individual district," the conference contends.

The 1971 legislature spent considerable time debating the size of the assembly, but quickly brushed aside consideration of a single-member plan. The new reapportionment plan provides for election of 40 of 50 senators and all 100 representatives from multi-member districts.

But proponents of single-member districts, including the Montana Citizens Committee on the State Legislature, will be trying to convince the Constitutional Convention of the merits of requiring the concept by constitutional mandate.

Critics of single-member districts contend that they give undue advantage to narrower interests, that such districting is more vulnerable to gerrymandering and that the larger number of districts makes any apportionment plan difficult to draw within court guidelines and geographical realities.

They also see multi-member districting as an advantage in urban areas where it is likely to promote a team approach among legislators on matters affecting their entire community.

THE CONSTITUTIONAL Convention also will be faced with another important decision about districting: The question of who should reapportion the legislature each decade. Past attempts by legislators to do their own reapportioning have ended in deadlock and failure. Legislators in areas of declining population are not likely to support plans which take representation from their districts, nor are they likely to favor a plan which jeopardizes their own elections.

Most states which have recently drafted constitutions have established a reapportionment commission, either to do the remapping or to act as a backup agency in the event of legislative deadlock.

Lobbying in the open

The Constitutional Convention will open the books of the paid lobbyists while opening its doors to the people.

Paid lobbyists—persons hired to promote the views of another—must register with the secretary of state and abide by the same restrictions on conduct as are imposed during a legislatiive session.

In addition, licensed lobbyists will be required by the Convention Enabling Act to file financial statements with the secretary of state every two weeks during the Convention's work session.

With the exception of "reasonable" personal and office expenditures, the lobbyist must list all expenditures for promoting or opposing constitutional provisions. The statements must be filed even if no money is spent.

'Home rule' becomes rallying cry

CITIES COUNTIES

18

Your local tax bill, local services and even the potholes in Main Street could be at stake when the Constitutional Convention tackles that nebulous slogan, "home rule."

Home rule has become the rallying cry for those who think stronger local government could do a better job.

For years, reformers have complained that because of constitutional limitations, cities and counties are weak sisters who are often unable to cope with the growing stresses of the 20th Century.

Montana's 1889 Constitution recognizes no inherent right of local government. Cities and towns which are scarcely mentioned, can make some local regulations and provide some services. But basically, municipalities are prohibited from doing anything unless the legislature authorizes it.

Counties fare even more poorly. Considered an administrative arm of the state, they lack even the basic power to pass local ordinances.

The state supremacy theory, often called the "Dillon Rule" after a 19th Century Iowa judge who formally stated it, generally has prevailed in Montana, although a more recent theory that local vovernment has some inherent rights has been cited in some court decisions, the constitution convention commission report, prepared by Jerry R. Holloron, notes. proponents of giving local government more power argue philosophically that local self-government is a basic American concept and that "the best government is that which is closest to home," according to the report.

FROM A PRACTICAL standpoint, home rule advocates say increased local autonomy would bypass meddlesome or unresponsive legislatures and free legislatures from the burden of running local government.

Most important, they argue that giving local officials greater power would pinpoint responsibility and eliminate alibis for nonperformance.

Opponents to "home rule" argue that greater power doesn't necessarily bring better government. Their most compelling argument is that local home rule might create local empires which would interfere with, rather than aid, solution to local problems, the report says.

Granting local government "home rule" can come in several different ways.

Traditionally, states have allocated local powers through the constitution, mainly because of distrust of the legislature. But critics of the "allocated powers" concept complain that it spawns restrictive court decisions, limits flexibility by "categorizing" functions and often ends up restricting local government.

A NEWER CONCEPT of "shared powers" or "residual powers" grants local government all powers not specifically denied by the constitution or the legislature—exactly the opposite of the present situation. The Montana League of Cities and Towns favors this approach, and many reformers say it is the most flexible.

But critics argue that nothing would be gained because a jealous legislature could by law strip local government of all power. Other methods of granting "home rule" power include combining allocated and residual powers, leaving it to the legislature or instructing the courts. The convention also could negatively limit the legislature's power, the report notes.

The "home rule" issue also means consideration of structure and charter-writing powers.

"Local charter-writing power (the power to set the structure of government) is the backbone of the 'home rule' movement," the commission report said. At present, only the legislature can write a charter.

THE COMMISSION report notes that county government structure has undergone some revolutionary constitutional changes because of amendments. "But the revolution has been one of words, not deeds," it adds.

Only tiny (population 675) Petroleum County has taken advantage of the "revolution" by consolidating offices and adopting a county manager form of government.

The other 55 counties are governed by three-member board of commissioners and in most cases a host of other independent elected officials. Lack of county executive responsibility has caused the Advisory Council on Intergovernmental Relations to brand counties "a combination Ichabod Crane and Don Quixote, headless and riding in all directions."

Governor as 'ornament'

The status of the office of governor in the eyes of the delegates to the 1889 convention is perhaps best revealed in a passage from the debates of that convention.

Delegate Timothy E. Collins of Great Falls attempted to amend the salary of the governor downwards to $2,500 from the proposed $4,000 salary. Resisting the motion was Martin Maginnis of Helena.

The exchange went like this:

COLLINS: "I think in the first place that the office of governor is more of an ornament than anything else. The duties are less than that of any other officer mentioned in this section (on the executive branch), and the compensation should be in accordance with the duties performed.

"The secretary of state, state auditor, state treasurer or superintendent of public instruction, either one of them, do a great deal more work—two or three times more work, and some of them ten times more work—than the legislative assembly will ever impose on the governor. The governor need not remain at the Capitol but during periods when official duties are to be performed. The routine duties of his office can be performed by his private secretary, and I believe that the governor of the new state of Montana for the present should receive but a nominal salary.

"Gentlemen may say that this is not in accordance with the honor of the office, but I say that the amount of compensation should be in accordance with the duties performed. The man who will hereafter be elected by the people of this great state as governor will be a man who can afford to fill the position for that sum of money ($2,500) and who will lose nothing by it.

"IT IS ALMOST a sinecure anyhow, and you can wipe it out of existence and not do the state any harm. It is like a great many other things that come down to us from the misty past. We have got it and we will hold on to it but we should only pay for the services that are done."

MAGINNIS: "I think the gist of the gentleman's argument was, in the remark he made, that those who are elected to the office of governor of the state of Montana can as well afford to perform the duties for the sum he mentions as for any other sum.

"That simply means that nobody but a rich man shall be elected governor of the state of Montana, and I do not believe that this convention or the people of this territory want to put a clause in our constitution or want to fix the compensation of this office at such a sum as that it shall make the office necessarily go to some rich man—go to some man to whom, as the gentleman says, it shall not matter to him wh ether the salary is $2,500 or any other sum.

"The office of the governor of the state is the office of the greatest dignity. The governor represents the state. He ought to be able to entertain and show courtesies to those who come to visit our state and our state Capitol."

The convention eventually resolved the debate by agreeing to an even higher salary—of $5,000. But Collins' characterization of the governor's office as more an "ornament" than anything else went unchallenged.

Other local issues

If delegates tire of debating "home rule" and local government finance, several other issues invite consideration, according to a Constitutional Convention Commission research report:

— **NUMBER OF CITIES** and counties. Local government reformers suggest that some of Montana's 56 counties should be consolidated and that if county government is strengthened, many of Montana's 126 municipalities would not be needed.

Delegates must decide whether to "freeze" the number of counties in the constitution, buck tradition by forcing consolidation or take the middle approach of leaving such issues as consolidation and municipal disincorporation to the legislature.

SPECIAL DISTRICTS. Probably the fastest growing form of government in Montana, special districts are not even mentioned in the constitution. Critics say they weaken local government but admit special districts do get things done.

—APPORTIONMENT. The "one man, one vote" rule has been extended to local government, and delegates may want to provide constitutionally for local reapportionment, direct the legislature or local units to do it or ignore the issue entirely.

—INTERGOVERNMENTAL cooperation. Some states, hailing cooperation as a means of solving problems which narrowly defined governmental units can't cope with, have blessed cooperation in constitutions.

—DECENTRALIZATION. More a concept for large urban areas, delegates may want to consider it as a concept which could benefit Montana several decades from now and structure a constitution which would not prohibit decentralization in the future.

Amendments: a very slow process

Although it's generally considered antiquated and woefully inadequate. Montana's Constitution has been amended only 37 times in 82 years.

And only a handful of those amendments. such as the 1934 provision for a progressive income tax, have brought about significant change in the state's fundamental law.

It's not that there hasn't been interest in constitutional revision. The legislative sessions of 1965, 1967 and 1969 considered an average of 30 proposed amendments each, more than double the average number considered in the decade before reapportionment.

But constitutional limitations on revision prevented any sweeping changes.

THOSE LIMITATIONS, in fact, were factors in the calling of a full-scale convention to take the first comprehensive look at the state's fundamental law since 1889. Therefore. one of the decisions delegates to the convention must make will be on the ease or difficulty of future revision of the document they will submit to the voters.

It is generally agreed that constitutional law, because it is designed to be of an enduring nature, should not be as easy to change as statutory law.

But analysts also say that too many restrictions prevent the document from keeping pace with changing times. Delegates must find the middle ground.

Under the existing Constitution, only three amendments can be placed on the ballot at one time and each must be limited to one subject.

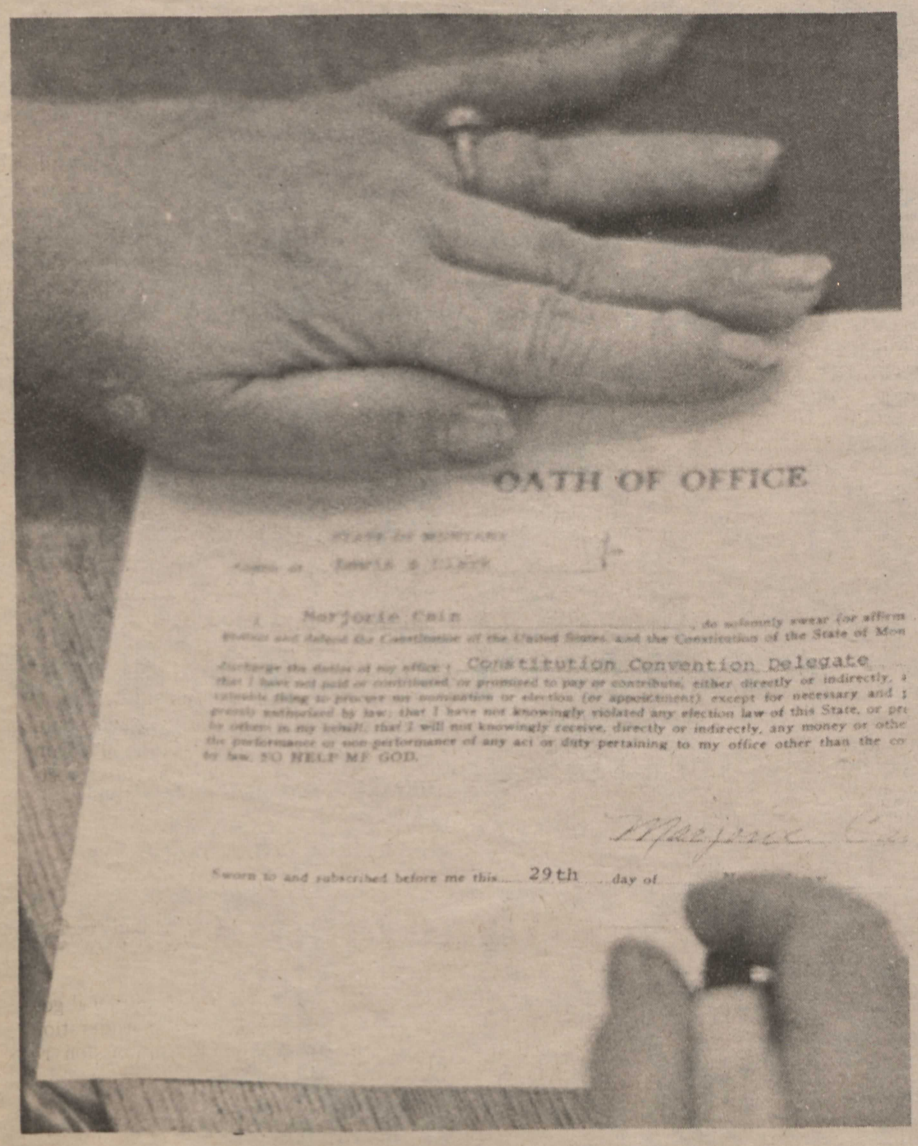
In addition, Montana is one of the few states in which the governor has the power to veto a proposed amendment. The latter provision is particularly unusual in that it takes a two-thirds vote of each house of the legislature to refer an amendment to the voters, the same margin needed to override an executive veto.

Delegates not only will decide whether to remove those restrictions, but whether to expand the methods constitutional revision. The existing document can be changed only by voter approval of proposals referred by the legislature or by a convention, either of limited scope in which a few specific articles are revised or of unlimited scope as is now the case.

Fourteen states permit constitutional change by popular initiative. in which citizens place an amendment on the ballot by collecting a certain number of signatures. The initiative method is designed to get around unresponsive legislators.

Other states provide for constitutional commissions to initiate revision, usually through recommendations to the legislature. The work of a commission would be similar to that done by the two legislatively created study commissions which laid the groundwork for the Montana convention.

The convention also may wish to follow the example of 11 states which have a provision mandating periodic referral to the voters of the question calling a new convention.



Voting rights guided by feds

Few restrictions are placed on the constitutional convention, but in writing principles guarding the basic democratic right to vote, delegates will be guided by federal law.

"The national constitution, especially certain amendments, and federal laws sharply curtail the states' ability to establish suffrage and election rules," says researcher James Grady in a report to the Montana Constitution Convention Commission.

Montana's constitution contains several restrictions on the right to vote that have been invalidated in whole or part by amendments to the U.S. Constitution, U.S. Supreme Court decisions and federal voting rights acts:

—AGE: Montana voters approved a constitutional amendment in 1970 that lowered the voting age to 19 but this has been superceded by the 26th amendment to the U.S. Constitution that fixed the voting age at 18.

—RESIDENCY: The state constitution specifies one year residency in Montana to vote in national and state elections while statutes set 30 days residency for county elections and six months for municipal elections. The Federal Voting Rights Act of 1970 has set 30 days residency to vote for president and vice president, thereby invalidating the Montana requirement in national elections.

—PROPERTY: The state constitution restricts voting to property taxpayers in elections that create a levy, debt or liability. The U.S. Supreme Court has ruled property qualifications for voting are unconstitutional because they deny equal protection of the laws.

Montana was one of the states that ratified the 26th amendment. The 1971 Legislature also approved a constitutional amendment to be placed on the ballot this November that would bring the state constitution into conformity on the 18-year-old vote, fix the residency requirement for all elections at 30 days and eliminate the property taxpayer qualification for bond and tax levy elections.

(These provisions probably will be included in a new constitution. If the proposed constitution is submitted to the voters in June or November and ratified, it would make the proposed amendment superfluous.)

IF THE 30-DAY residency requirement is adopted, it will be the shortest residency requirement of any state.

The present constitititution says little about elections and constitutional authorities agree it should remain that way. They contend the mechanics of registration and conduct of elections should be left for the legislature to devise.

The convention also must decide whether to leave in the constitution the common voting disqualifications for conviction of a serious crime or mental incompetence, or leave disqualification to statutory law.

The constitution provides for initiative and referendum. Authorities urge these methods of popular control of lawmaking be retained. The initiative in Montana now applies only to statutory law and it is recommended that initiative be extended to constitutional amendment.

DELEGATES

Pictured here are the delegates to the Montana Constitutional Convention. The names under each set of pictures identifies the delegates from left to right. Identification is by name, party, home, occupation and age.

AASHEIM, MAGNUS, D-Antelope, farmer-rancher, 62.
ANDERSON, JOHN H. JR., R-Alder, rancher, 55.
ANDERSON, OSCAR L., I-Sidney, banker and farmer, 61.
ARBANAS, HAROLD, D-Great Falls, Catholic priest and educator, 47.

ARNESS, FRANKLIN, D-Libby, lawyer, 38.
ARONOW, CEDOR B., D-Shelby, lawyer, 61.
ARTZ, WILLIAM H., D-Great Falls, certified public accountant, 53.
ASK, THOMAS M., R-Roundup, lawyer, 46.
BABCOCK, BETTY, R-Helena, motel officer and housewife, 49.
BARNARD, LLOYD, D-Saco, farmer-rancher, 67.
BATES, GRACE, D-Manhattan, housewife, 54.
BELCHER, DON E., D-Roundup, insurance agent, 52.
BERG, BEN E. JR., R-Bozeman, lawyer, 55.
BERTHELSON, E. M., R-Conrad, banker and rancher, 61.
BLAYLOCK, CHET, D-Laurel, teacher, 47.
BLEND, VIRGINIA H., D-Great Falls, reprographer, 57.

BOWMAN, JEAN M., R-Billings, housewife, 33.
BRAZIER, GEOFFREY L., D-Helena, lawyer, 42.
BROWN, BRUCE M., I-Miles City, lawyer, 49.
BUGBEE, DAPHNE, D-Missoula, architect, 50.
BURKHARDT, WILLIAM A., R-Helena, Congregational minister, 41.
CAIN, MARJORIE, D-Libby, teacher, 56.
CAMPBELL, BOB, D-Missoula, lawyer, 31.
CATE, JEROME, J., D-Billings, lawyer, 32.
CHAMPOUX, RICHARD J., (RICK), D-Kalispell, college professor, 41.
CHOATE, LYMAN W., R-Miles City, commercial flying, 59.
CONOVER, MAX, D-Broadview, farmer-rancher, 59.
CROSS, C. LOUISE, D-Glendive, housewife, 52.

DAHOOD, WADE J., R-Anaconda, lawyer, 44.

DAVIS, CARL M., D-Dillon, lawyer, 49.

DELANEY, DOUGLAS, D-Grass Range, rancher, 45.

DRISCOLL, MAURICE, D-Butte, educator, 57.

DRUM, DAVE, R-Billings, businessman, 48.

ECK, DOROTHY, D-Bozeman, housewife, 47.

ERDMANN, MARIAN S., R-Great Falls, housewife, 60.

ESKILDSEN, LESLIE "JOE," D-Malta, farmer, 49.

ETCHART, MARK, R-Glasgow, farmer-rancher, 48.

FELT, JAMES R., R-Billings, lawyer, 51.

FOSTER, DONALD R., I-Lewistown, honey bee management, 34.

FURLONG, NOEL D., D-Kalispell, teacher, 44.

GARLINGTON, J. C., R-Missoula, lawyer, 63.

GRAYBILL, LEO JR., D-Great Falls, lawyer, 47.

GYSLER, E. S. "ERV," R-Fort Benton, manufacturer, 48.

HABEDANK, OTTO T., R-Sidney, lawyer, 54.

HANSON, R. S. (BOB), I-Ronan, retired auto dealer, 59.

HANSON, ROD, D-Fairfield, electric coop manager, 51.

HARBAUGH, GENE, D-Poplar, Presbyterian minister, 35.

HARLOW, PAUL K., D-Thompson Falls, farmer, 67.

HARPER, GEORGE, I-Helena, Methodist minister, 48.

HARRINGTON, DAN W., D-Butte, teacher, 33.

HELIKER, GEORGE B., D-Missoula, college professor, 52.

HOLLAND, DAVID L., D-Butte, lawyer, 47.

JACOBSEN, ARNOLD W., R-Whitefish, retired owner of resort and clothing stores, 58.

JAMES, GEORGE H., D-Libby, retired postmaster, 58.

JOHNSON, TORREY B., R-Busby, rancher, 55.

JOYCE, THOMAS F., D-Butte, lawyer, 48.

KAMHOOT, A. W., R-Forsyth, semi-retired businessman, 59.

KELLEHER, ROBERT LEE, D-Billings, lawyer, 48.

LEUTHOLD, JOHN H., R-Molt, rancher, 64.

LOENDORF, JEROME T., R-Helena, lawyer, 32.

LORELLO, PETER, D-Anaconda, owner of bar-restaurant, 42.

MCCARVEL, JOSEPH H., D-Anaconda, locomotive engineer and bakery owner, 58.

MCDONOUGH, RUSSELL C., D-Glendive, lawyer, 47.

MCKEON, MIKE, D-Anaconda, lawyer, 25.

MCNEIL, CHARLES B., R-Polson, lawyer and metallurgical engineer, 34.

MAHONEY, CHARLES H., I-Clancy, retired rancher, 65.

MANSFIELD, RACHELL K., D-Geyser, teacher, 55.

MARTIN, FRED J., R-Livingston, newspaper editor, 67.

MELVIN, J. MASON, D-Bozeman, retired FBI agent, 57.

MONROE, LYLE R., D-Great Falls, social service, 26.

MURRAY, MARSHALL, R-Kalispell, lawyer, 39.

NOBLE, ROBERT B., R-Great Falls, merchant, 64.

NUTTING, RICHARD A., R-Silesia, farmer-rancher, 50.

PAYNE, KATIE, R-Missoula, housewife, 49.

PEMBERTON, CATHERINE, R-Broadus, journalist and housewife, 62.

REBAL, DONALD, D-Great Falls, auto dealer, 50.

REICHERT, ARLYNE E., D-Great Falls, research assistant, 46.

ROBINSON, MAE NAN, R-Missoula, graduate student, 24.

ROEDER, RICHARD B., D-Bozeman, college professor, 41.

ROLLINS, GEORGE W., D-Billings, college professor, 55.

ROMNEY, MILES, D-Hamilton, newspaper publisher, 71.

RYGG, STERLING, R-Kalispell, auto dealer, 57.

SCANLIN, DON, D-Billings, teacher, 57.

SCHILTZ, JOHN M., D-Billings, lawyer, 52.

SIDERIUS, HENRY L., D-Kalispell, farmer, 61.

SIMON, CLARK E., R-Billings, merchant, investor and rancher, 68.

SKARI, CARMAN, D-Chester, farmer-rancher, 39.

SPARKS, M. LYNN, D-Butte, public relations, 29.

SPEER, LUCILE, D-Missoula, retired librarian, 73.

STUDER, R. J. SR., R-Billings, contractor, 68.

SULLIVAN, VERONICA, D-Butte, housewife, 60.

SWANBERG, WILLIAM H., D-Great Falls, lawyer, 55.

TOOLE, JOHN H., R-Missoula, businessman, 53.

VAN BUSKIRK, EDITH, D-Havre, housewife, 52.

VERMILLION, ROBERT, D-Shelby, radio announcer, 32.

WAGNER, ROGER A., D-Nashua, farmer-rancher, 29.

WARD, JACK K., R-Hamilton, veterinarian, 39.

WARDEN, MARGARET S., D-Great Falls, housewife, 54.

WILSON, ARCHIE O., R-Hysham, rancher, 62.

WOODMANSEY, ROBERT F., R-Great Falls, teacher, 35.