

A New Constitution:

Most Delegates Defend It

Despite Admitted Shortcomings

As a Step in Montana's Progress

The man — or woman — who just finished writing the new proposed constitution isn't going to be easy to convince his work, if approved by voters, won't improve state government.

With rare exception, delegates hail it as a model for other states to use, a fine example of fundamental law, a flexible and brief vehicle for streamlining state government and just about everything else that sounds good.

"I'm doubtful that any other group of Montanans elected in this state could have come up with any more of a progressive document," Marshall Murray, a delegate from Kalispell, surmised recently. "Certainly everything a good constitution should contain, ours contains."

A bit more cautious, Delegate Katie Payne, Missoula, put it this way: "There's not enough reform to make you nervous, but at the same time there's enough reform that we can take care of our present problems."

Most delegates in western Montana contacted by The Missoulian cite the proposed legislative article with its provisions for annual sessions, single member districts, open committee meetings and ability to call itself into special session as a sweeping example of that reform, along with an optional ballot box side issue that could result in a one-house legislature.

"It grants far more power to our legislature, but also makes it far more responsive to the public and more responsible," said Charles B. McNeil, a delegate from Polson.

Miles Romney, Hamilton, a former state legislator, calls the proposed legislative setup "greatly improved" over the present one.

"The legislature is so severely circumscribed by time that it is impossible to function properly," he told The Missoulian. The proposed document, he added, gives the legislature adequate time, so in the future "there should be no excuse for not getting a better performance from the state legislature."

Missoula Delegate George Heliker says he thinks the proposed article will make the legislature "more reasonable and more effective."

"The chief good points (in the constitution) are in

The proposed article contains 35 sections, with new ones ranging from the right to a clean environment to an 18-year-old adulthood provision.

"I think it's the finest bill of rights I have read," said Miss Speer who has researched many state constitutions. "We've kept the old bill of rights and we've added so many things."

Specifically, she cited rights to citizen participation in government, the 18-year-old adulthood provision and the environment section.

Campbell, a member of the bill of rights committee, is equally elated about the article.

"That bill of rights by far will be the best in the nation," he said.

Aside from the bill of rights itself, delegates also are quick to cite a separate environmental reference under the proposed environmental and natural resources article.

McNeil points to "Three strong points that no other constitution has." His reference is to a charge to the state and its individual citizens to maintain and improve "a clean and healthful environment," a requirement that the legislature provide adequate measures to protect the environment and a mandate that adequate remedies be instituted to prevent unreasonable depletion of the state's resources.

"What it does is at least give some strong incentive to the legislature to enact some strong environmental legislation," was Campbell's assessment.

Yet the environmental article, for all its praise, also is the great source of disappointment for some delegates who had hoped it would include a provision granting citizens the right to sue polluters.

Heliker describes it as "minimal."

"I really don't think it accomplishes much," he said.

Champoux's indictment is "I really don't think the statement says anything."

And Miss Speer describes the omission as one of the "weakest" points of the major sections of the new documents.

"It has no teeth, no effectiveness unless you have the right to sue," she said.

Another major source of disappointment among delegates is the proposed judicial article, a compromise provision that, while making some changes in justice of the peace courts and selection of judges, falls far short of the reform desired by some.

Specifically, it retains the present three-level court system, including justice of the peace courts, and provisions for election of all judges. Reforms are minor: providing for the filling of vacancies from a list of candidates stipulated by law and confirmed by the state Senate, and a merit retention system for judges whereby if a judge seeking re-election is unopposed, his name is placed on the ballot anyway for voters to approve or reject.

"That was my greatest disappointment," said John Toole, Missoula, first vice president of the convention. "The judicial (article) is better than it was,

but it represents a patchwork job on what is basically a bad system."

Heliker's criticism is more pointed. "I'm not sure what would be the ideal form of judicial system, but whatever it is is not in this article," he said, describing it as "sort of a sham."

"I certainly wouldn't call it reform," he added.

Delegate J. C. Garlington, a Missoula lawyer, calls it his "principle disappointment" because of its "failure to get the judicial department more removed from politics."

Mrs. Robinson says simply the article "isn't as good as it could have been."

However, despite those expressed shortcomings, the article is not without mild support.

McNeil points out all justices of the peace would receive salaries instead of fees for court cases under the new article, a provision he says strikes "at the heart of the evil of the JP system."

Champoux, acknowledging criticism that the lower court justices were not eliminated altogether, said he believes the public wants the so-called "peoples' courts."

Campbell calls the methods for selection of judges "an improvement over the present situation," particularly citing the proposal for filling vacancies.

The proposed executive article, which eliminated only the state treasurer from a list of seven constitutional officials, also produced comments from delegates on both sides. Some expressed disappointment that a short ballot was not adopted; others believe the public wants to elect its state officials.

"There's very little reform in the executive article," said Heliker.

And Miss Speer said the new proposal, like the present executive article, continues to fragment executive authority.

Yet most delegates are satisfied that the people want it that way.

Champoux, for example, called it a "disappointment in terms of many peoples' expectations in the executive article," but cited testimony during the convention which indicated people want a connection with state officials.

"They don't want that gray mass behind the leaders," he said.

Both articles seem to summarize the convention's bent for compromise — a fact most delegates are willing to admit for various reasons.

One is a fear controversy might produce a negative vote June 6; another is that the people back home don't want extreme reform — and for that matter neither did most of the delegates.

"It was essentially a convention of compromise," Romney surmised. "People who wanted broad reform fought for it, and those who didn't fought against it." Toole agrees, saying controversial issues, while they were not ignored, "were debated and resolved mainly by compromise."

"The only way you can resolve a controversial issue is to resolve it by debate and compromise and

this is the way it was done," he added.

However, Toole also noted no "extreme positions" were written into any of the articles; and he gave a reason that many convention observers readily discerned: "Had we adopted extreme positions in any of the articles we might have endangered passage."

Indeed, the hesitancy to adopt the extreme positions resulted in several turnabouts as the convention progressed. Recalling those events prompted Heliker to assess: "There were a couple of instances where the convention was almost flighty."

Aside from those particular instances, Heliker says he sensed a reversal of attitude in the convention's gauging of public opinion as the convention progressed.

At the beginning, he acknowledged a hesitancy to tackle the controversial, but toward the end, "I thought they were getting a little too independent of public opinion and were tending to resist quite vigorously organized attempts to pressure the delegates."

Mrs. Robinson views the convention as shying away from the emotional rather than the controversial. And she pointed particularly to provisions on whether to retain the death penalty and allow gambling, both of which will be on the ballot as side issues along with the proposed document.

"I don't think it really stayed away from controversial issues," she said.

McNeil, however, says he believes delegates "undoubtedly" made an effort to avoid controversial reform when they sensed "the reform was not what the people back home wanted."

Miss Speer said the hesitancy to act was registered early in the convention, but disappeared as the convention progressed.

"I don't see that that was an important measure later," she said, adding the reluctance was fed by an "awareness of what was constitutional, and (the delegates) were trying to avoid statutory matters which would have made the constitution inflexible in the future."

Her view was shared by several delegates who saw the fear of voters disappear as the convention



the legislative article," he said.

Bob Campbell of Missoula, who calls the article "a tremendous improvement," particularly cites an end to closed legislative committee meetings.

"We cut out these closed secret meetings," he said.

If the legislative article is important, much of its significance is the responsibility with which legislators are charged under the proposal.

A prime example is the proposed revenue and finance article, also hailed by delegates as a vast improvement over the old.

"Almost every article time and again provides for curing some problem by turning it over to the legislature and, of course, that gives more power to the legislature," Romney said. Indeed, he added, taxation is left "almost exclusively" to the legislature.

The revenue article in particular is cited as a "tremendous" one by Richard Champoux, a delegate from Kalispell, because it provides for an "equal method of taxation in the future."

"It is just an excellent article," Missoula Delegate Mae Nan Robinson summarizes the taxation proposal. "It's fundamental and not crammed full of legislative material."

Another laudation comes from Lucile Speer, Missoula, who calls it "the finest article" in the proposed constitution.

"It sounds like we are leaving a great deal to the legislature, but that is one of the ways you make it more flexible to changing conditions," she said. "It is 100 per cent constitutional. It is not statutory material."

Local government is another area where delegates think they have proposed significant reforms.

Miss Speers, for example, a member of the convention's local government committee, calls it "extremely flexible and imaginative" and a "tremendous step forward."

Like many delegates who praise the article, Miss Speer points specifically to provisions that give more power to counties and self government to localities that want to write their own charters.

Champoux goes even further, hailing the article as "an example that is going to be used by other conventions."

"It's so flexible I don't think you can go any further with it," the Flathead Community College professor said.

The delegates also are quick to point to the expanded bill of rights under the proposed constitution.

The Voice of Dissatisfaction: 'This is not a populous document.'

In the main, delegates to the Constitutional Convention have many good things to say about the document they just finished writing.

But Frank Arness, delegate from Libby, isn't one of them.

"I'm not very enthusiastic about the convention," he told The Missoulian in a telephone interview. "It was a disappointment to me."

And the 38-year-old lawyer recited a list of complaints primarily hinged to the convention's failure to carry reform far enough.

"I think the delegates were very timid," he said. "They were very, very cautious. I think we could have been a little bit daring and we weren't."

As an example, he cites the proposed executive article where six of seven state officials kept their constitutional elective status.

"We didn't do anything," he said. "We didn't even discuss it."

Moreover, he described the convention's decision to remove the state treasurer from constitutional status only after it first made no change in the present executive article "an act of cowardice."

The new judicial article, which provides a modified system for the election and appointment of judges, "really failed," according to Arness.

"We made a terrible mishmash," he said.

He also cited placing the question of a unicameral — or one house — legislature on the June 6 ratification ballot as a side issue as still another example of indecision.

"We never even debated that question," he said. "That was supposed to be a burning issue."

The body of the proposed constitution con-

tains a provision for a two-house legislature, but makes several reforms, including annual sessions, election from single-member districts, and an allowance to call itself into special session.

And while he described the proposed legislative article as "something" on the plus side, Arness adds it is "certainly less than we talked about when we were campaigning."

He also said the new taxation article, which removes restrictions on taxation, also is better than the old.

"If we're going to point with pride I think we're going to point at those two things," he added.

But Arness isn't pointing with pride to much of anything.

He cited a recent article in Time which described the new constitution as a populous document.

"This is not a populous document unless you take all the worst features of populism," Arness scoffed. "There was no reforming zeal left by the time we were through. We had a series of compromises."

Moreover, he describes the press as "pretty tolerant" in its largely favorable editorial comments on the convention.

"I would say maybe they didn't expect much," he said.

And how does he view public sentiment on the proposed document?

"I think the public will ratify the constitution all right," he said. But he added: "I think the people would accept a great deal more than what we're offering them."

Arness said he plans to vote for it.

"But, it's not easy to be enthusiastic one way or another," he quickly added.

continued.

"Actually, I think we faced every major issue," said Murray, although he admitted adverse public opinion was "a consideration" at times.

It will become even more of a consideration between now and June 6 when Montana's electorate, which authorized the convention by an overwhelming margin in 1970, will ratify or reject the new constitution.

And the delegates, while each has at least some misgivings about the proposed document, can see no good reason why it should not be approved.

"I'm very happy that there's more than enough reform to warrant passage of the new constitution," Campbell said.

And Murray offered this happy assessment: "I'm not concerned about the operation of our state under this constitution."

Others, however, qualify their endorsement of the proposed document.

Heliker describes it as a "very good 1930 constitution."

"Obviously I do not think it's good," he said, citing his list of criticisms. "There were a lot of things that could have been done that weren't done."

But he added the final decision will rest with the future and how some changes are implemented by the state legislature.

"The effect it has on the future will depend on developments in the future," he said.

Still others are concerned about potential sources of opposition and the possible reasons behind it.

Champoux says if there is any opposition to the constitution, politicians should be held responsible.

"The opposition against this constitution is going to be the politicians who are looking for publicity," he said. "If any one of these politicians defeat this constitution, then every one of these guys deserve to be defeated too."

As for the constitution, Champoux said: "It's a good document, it's flexible and I'm satisfied with it."

What those comments seems to amount to is that most delegates are satisfied with the new document they produced — even though it does not contain as many reforms as some had hoped — because, it is an improvement over the old, outdated one written 82 years ago.

As Garlington said in summary: "My notion is that if it's better than the old one, they had better take the reforms that are in it rather than ding it because there aren't enough, and go back to none at all."

By GARY LANGLEY, Missoulian Staff Writer