

ORIGINAL

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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 12309

THE STATE OF MONTANA, ex rel.
WILLIAM F. CASHMORE, M. D., and
STANLEY C. BURGER,

Relators,

-vs-

FORREST H. ANDERSON, as Governor
of the State of Montana,

Respondent.

BRIEF AMICUS CURIAE

ISSUE

Whether the electors voting in favor of the proposed new Constitution at the election June 6, 1972, constituted a majority such as required by the Constitution of Montana.

LAW

Section 8, Article XIX of the Montana Constitution provides that the Legislative Assembly may submit to the electors the question of whether to convene a convention to revise, alter or amend the Constitution and that if the Legislature approves such proposition the Legislative Assembly shall call a convention, said convention shall meet within three months after the election of delegates and shall prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary and the said revisions, alterations or amendments shall be submitted to the electors and unless submitted and approved by a majority of the electors voting at the election, no

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STATE OF MONTANA

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such revision, alteration or amendment shall take effect.

Also Section 29, Article III: "The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

In further construing Section 8, Article XIX it is necessary to consider Section 9 of Article XIX which deals with amendments to the Constitution which may be proposed directly by the Legislative Assembly and which may be submitted directly to the electorate for approval or rejection and which provides that such amendments will become effective if approved by "a majority of those voting thereon * * * *."

ARGUMENT

It is noted that pursuant to Section 29, Article III of the Constitution a strict construction must be given to the provisions of the Constitution. Section 8, Article XIX, provides for the Constitutional Convention approach to revision, alteration or amendment of the Constitution whereas Section 9, Article XIX provides only for amendment to the Constitution. Amendment and revision have been distinguished in State ex rel. Corry vs. Cooney, et al, 70 Mont. 355, 225 P. 1007, wherein it was held that "revision of the Constitution authorized by Section 8, Article XIX, implies the probability of extensive and comprehensive action by a convention, while an 'amendment' under Section 9 does not only comprehend any change in the Constitution which adds something to or takes away from it, but is susceptible to a construction which will make it cover several propositions, all tending to effect or carry out one general object or purpose, and all connected with one subject."

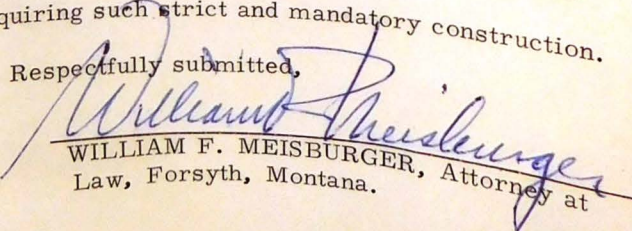
The authors of the Montana Constitution under which we are now governed obviously recognized the fundamental differences in the approach to be employed by proceeding under either Section 8 or Section 9. Proceeding under Section 8 the Legislative Assembly would be moving toward a general

1 revision and a general overhaul of the document, submitting it to a close over-
2 all scrutiny whereas, under Section 9, only specific sections which may have
3 proved troublesome, could be amended by a separate and distinct action upon
4 each section, and thus the reason for the limitation on the number of amend-
5 ments which could be submitted to the electorate at any one time.

7 The framers of the Montana Constitution under which we are now
8 governed must have taken into consideration the import of the clear and lucid
9 language used in these two conjunctive sections, to-wit: In Section 8 that the
10 revisions, alterations or amendments had to be approved by "a majority of
11 the electors voting at the election," whereas in 9 the differentiation was dis-
12 tinctly made that approval for a single and separate amendment had to be
13 approved by "a majority of those voting thereon."

15 At the election on the proposed new Constitution June 6, 1972, a
16 separate ballot was furnished on the Constitutional question. The presentation
17 of the propositions on the Constitutional ballot and the import the various
18 propositions relating thereto was obviously confusing and perhaps even in-
19 tentiously confusing, but that is not the point. The point is that the number
20 of electors who voted on the question received the Constitutional ballot and
21 cast such ballot, though they may have elected to refrain from marking this
22 ballot as to one or more of the four propositions contained thereon, one of
23 which was a direct question concerning approval or disapproval of the proposed
24 Constitution. The number of electors voting at the election has been thus es-
25 tablished and it is respectfully submitted that unless a majority of those who
26 cast this particular ballot approved the new Constitution, it must fail and that
27 no other construction can be placed upon Section 8 of Article XIX of the Con-
28 stitution of the State of Montana without violation to the meaning and intent
29 of Section 29, Article III, requiring such strict and mandatory construction.
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31 Respectfully submitted,

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WILLIAM F. MEISBURGER, Attorney at
Law, Forsyth, Montana.