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MONTANA PUBLIC AFFAIRS

Bureau of Government Research, University of Montana, Missoula 59801

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REPORT

Number 1--November 1967

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The 1967 Montana Legislative Assembly

This report initiates a series which will be issued bimonthly during the academic year.

Any of three distinctive aspects of the Fortieth Montana Legislative Assembly would assure its place in the legislative history of the Treasure State.

1) As the result of judicial reapportionment the Assembly elected in November 1966 was the first in half a century to be chosen, in either of its houses, according to modern standards of equitable representation. It was also the first since 1889 to be elected in its entirety without hold-over Senators.

2) A responsible political leader—Republican Governor Tim Babcock—finally grasped the sales-tax nettle to propose its adoption in one of the few states where resort to that tax is still an issue. This ended a suspenseful silence, but evoked a sharply partisan response, for the governor enjoyed a sympathetic party majority only in the House of Representatives. Democrats controlled the Senate.

3) Partisan deadlock between the chambers over the sales tax issue pervaded the sixty calendar-day regular session and eventually forced the governor to call the first extraordinary session in more than thirty years. In the sixteen day special session convened at the end of the regular session, Democratic Senate leaders blocked the sales tax and persuaded the legislature to meet the need for increased state revenues by increasing income, gasoline and truck taxes.

Legislative input and output of the 1967 session exceeded previous records, even before the special session was convened. There were 828 bills and 131 resolutions introduced, and 362 statutes (including appropriations acts) and 34 resolutions were adopted. The special session was concerned almost exclusively with enactment of four major revenue acts and twenty-one major appropriations.

General fund appropriations of \$123.8 million for the 1967-1969 biennium represent an increase of 27 percent over the previous two years. State support for public schools under the foundation program would amount to \$59.1 million, an increase of 9.2 percent over actual state support in 1965-1967, and the six-unit University system was authorized to spend \$45.8 million, including \$36 million from state general funds, an increase of 45.7 percent over the appropriations of the previous biennium.

The Tax Issue

Governor Babcock surprised the Assembly with his proposal to meet increased expenditure needs with a general three percent sales tax. The Republican House majority supported the proposal, calling it an "education tax." With a 64-40 majority, Republicans adopted a sales tax bill despite defection of a few of their members. But Senate Democrats had warned the House leadership early in the session that they might reject such a measure, and they did, holding their slender 30-25 majority to a man. Eventually the Democratic legislators prevailed in their insistence that the state's revenue needs should be met in some other way; the minimum personal income tax rate was raised from 1.1 percent to 2 percent on the first thousand dollars of taxable income; with proportionate increases in intermediate brackets, the rate on income over \$25,000 was raised from 7.9 percent to 10 percent. Corporate income taxes were raised one-fourth of one percent, to 5.5 percent. Another half-cent was added to the state's six-cent gasoline tax, and truck license fees were increased, along with maximum allowable tonnages for commercial truckers.

The sales tax proposal may persist as a critical political issue in 1968 after a legislative session in which the Republican governor and most Republican legislators supported such a tax while Democratic legislators, without public exception, opposed it.

Reapportionment

In July 1965, a three-judge federal district court reapportioned the Montana Legislative Assembly (*Herweg v. 39th Montana Legislative Assembly*, 246 Fed. Supp. 454) and adjusted the fifty year old boundary between the state's two congressional districts (*Roberts v. Babcock*, 246 Fed. Supp. 396).

Having successfully managed election under the new system, the 1967 legislators showed little disposition to tamper with the court's plan and gave both reapportionments the sanction of statutory enactment. Where each of the 56 counties had elected one senator and at least one representative, numerous counties of small population were joined to create senate and representative districts of two to four counties, for election of one or two legislators. Populous counties have from two to six senators, and as many as twelve representatives. All senators and

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representatives were elected at-large within the new county-wide or multiple-county districts. A constitutional amendment adopted in 1966 permitted subdivision of counties into single-member districts, but the 1967 Assembly revealed little interest in such arrangements.

Reapportionment shifted representation among the major regions of the state. Eleven Pacific-slope forest and mining counties gained six senators and seven representatives, entirely at the expense of twenty-six southern rangeland counties. Nineteen northern cropland counties east of the Continental Divide retained their regional share of senators and gained five representatives. Since each of the regions contains one or more major urban centers, there were also local shifts of representation from rural to urban counties within each of the three regions.

Despite election of the entire Senate in 1966, that body was rich in legislative experience; 30 of its 55 members had served in at least three previous legislative sessions and only 13 were first-term legislators. Of these, as might be expected, 10 were elected in populous counties which elected more than one senator for the first time. The House, always less experienced, had 46 first term members, somewhat more than the long-range average but not more than in 1961 when Republicans also recaptured control after three sessions of Democratic House dominance.

Ranchers, stockmen and grain farmers have traditionally comprised the largest occupational groups in the Montana legislature. Reapportionment reduced their total share by about eight percent in each chamber, to 40 percent of the Senate and 31 percent of the House, as compared with 1965. Professions gained about eight percent in the 1967 Senate and industry-related occupations by about the same margin in the House, compared to 1965. An interesting but only superficially curious feature of the 1966 elections was the substantial number of farmers and ranchers elected from districts predominantly urban. Reapportionment worked no basic changes in kind of employment and affluence as selective factors in legislative recruitment.

Reapportionment seems to have had little effect on more or less traditional patterns of partisan political control in the legislature. Each party has bases of strength distributed among several regions, and in major cities as well as rural areas. Democrats retained control of the Senate for the fifth consecutive biennium by a slightly reduced margin, 30-25. Republicans recaptured control of the House for the second time in the decade, by a margin of 64 seats to 40. This Republican gain in the House seems to have reflected general party recovery after 1964 rather than reapportionment. Incumbency and seniority may have protected Senate Democrats from the partisan swing.

See Waldron, "Reapportionment and Political Partisanship in the 1966 Montana Legislative Elections," Fall 1966 *Montana Business Quarterly* 11-28; and for general background, "100 Years of Reapportionment in Montana," Fall 1966 *Montana Law Review* 1-24.

Constitutional Reform

Three dozen amendments have extended the fabric of the 1889 state constitution without working major changes in its design or in the powers of government in Montana. The document protects a number of powerful economic interests and there has been little public discussion of general constitutional revision in Montana. Thus Governor Babcock startled many, a few weeks after his defeat for the United States Senate last November, by suggesting to a wool-growers meeting that the time had come "to determine if a constitutional convention is needed to update our constitution to fit today's fast-moving needs." He did not repeat the suggestion in his greeting to the 1967 legislature, a month later, but several legislators introduced proposals for a constitutional commission or a legislative committee to study the problem. Late in the session the Legislative Council was directed to conduct an interim study of the need for revision of the state's aging charter.

The constitution limits to three the number of amendments the legislature may submit for ratification in any general election. The 1967 Assembly proposed that this number be increased to six, and the vote on ratification of this "gateway" amendment will occur in November 1968. If adopted, it would substantially broaden the possibility of constitutional revision without the calling of a convention. A second amendment on the ballot next November would remove the constitutional prohibition against legislative increase of salaries of public officials during their elected or appointive term of office.

Legislative Processes

On the eve of the 1967 session citizen conferences and the press remarked on the legislature's need for more time to conduct its work, and a number of proposals were introduced to lengthen the biennial session, or to make sessions annual. Eventually the Assembly proposed a constitutional amendment to lengthen the biennial session to eighty days; the proposal will be on the November 1968 ballot for ratification.

The Assembly took two significant steps to strengthen its control over fiscal affairs. It created an eight-member bipartisan Legislative Audit Committee with authority to employ an auditor and to conduct an independent legislative post-audit of "each agency of state government." Another bipartisan eight-member Legislative Fiscal Review Committee with members from the Senate and House committees responsible for appropriations was established. With a fiscal analyst from the staff of the Legislative Council, this committee has authority to evaluate agency and institutional programs, to review executive budget requests, to make independent budget recommendations to the legislature, to estimate returns from taxes, and to study the state's financial organization and conditions. Both positions have been filled, both committees are functioning,

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and both staff officers will be at the service of the Assembly during its sessions.

In addition to adopting the 1965 judicial reapportionment into statutes the Assembly provided new arrangements for filling legislative vacancies.

The Senate met in a brightly refurbished chamber which included new desks, desk microphones and electric voting equipment similar to that installed in the House of Representatives in 1956. A \$1.5 million remodeling of a portion of the original Capitol building gave lobbyists wider, brighter corridors to pace, while the legislators gained private exits from their chambers so they could leave their desks without running the gauntlet. There were improved lunch and communications facilities, a new elevator and stair-well, and better quarters for some legislative service personnel, including the Legislative Council. However, the legislators gained little working space for themselves and the pathetically inadequate space for operation of legislative committees was, if anything, reduced in the remodeling to make room for equipment.

Urban Affairs

Montana's population lives in clusters separated by expanses of virtually unpopulated land, but the clusters themselves are small. The total population of the nine largest cities accounts for less than half of the state's 700,000 population.

If urban interests expected reapportionment to work legislative miracles they were disappointed in 1967. The secretary of the Municipal League identified 131 bills of interest to cities and towns, but less than half of the 38 League-sponsored bills were enacted and some of the most-sought measures failed. The state Association of City-County Planning Boards sponsored nearly a dozen bills of much interest to the larger communities, but secured passage of none. It is probably accurate to say that efforts to mobilize urban support behind such legislation was in no way commensurate to the gain in urban representation in 1967.

The most-controverted and publicized legislation of interest to several larger cities was a "Clean Air Act" to be administered by the State Board of Health and a state director of air pollution control. Its enactment gave fresh currency to the axiom that at least three sessions are needed to get significant new legislation. The health board was directed to establish ambient air quality standards for the state and authorized to regulate the sources of pollution by a permit system and inspections. Violations of regulations are punishable by fines up to \$1,000 for each day of violation. The statute also authorizes establishment of municipal and county air pollution control programs by local option.

A potentially significant Interlocal Cooperation Act permits local governments and state agencies to contract together to provide services or to pool resources in a common project. The legislature rejected a proposal to create a State Department of Urban Affairs but the State Department of Planning

and Economic Development was reorganized with a substantially increased budget and an expectation that it would work with the communities.

A campaign for additional local street revenues was frustrated but the State Highway Commission was authorized to spend \$900,000 in the cities and \$600,000 in the counties for local street and road construction and repair, funds to be derived from the half-cent increase in the gasoline tax. Salary limits for aldermen and mayors and wage ceilings for firemen and police were raised but remain statutory. Cities now may adopt voluminous building codes and health codes by reference to save the cost of reprinting them as ordinances. Salary scales and tax authority in the never-used 1923 city-county consolidation statute were modernized.

The legislature rejected bills to authorize additional local levies for capital expenditure or special snow removal districts, to increase annexation authority or the jurisdictional limits of city-county planning boards, and to grant extraterritorial zoning authority to municipalities.

Critics of reapportionment who had feared disaster to the old ways now pointed to this record to reassure each other that reapportionment had made little difference after all. But legislators and other observers remarked a different "feel" in the session, along with dislocation of some well-established power relationships. A dramatic behind-the-scenes collision between powerful, frequently-aligned interests complicated evaluations of change. Anaconda mining interests supported Democratic opposition to the sales tax which would fall heavily on purchases of equipment in an increasingly automated operation, while the Montana Power Company and other utilities lined up behind Republican friends of the sales tax. However it was widely rumored that these alignments were also rooted in the senatorial contests of 1966 and 1964; economic determinists of varying persuasion thought a new diversity and pluralism might be emerging in Montana's interest-group politics.

Elections

A single experience with a short election campaign after an August 1966 primary convinced the Assembly to move the primary date back to the first Tuesday in June for the 1968 campaigns. The statutory control of the Secretary of State over ballots and voting equipment was modified to let counties adopt punch-card ballots which can be tallied with great speed by computers. Missoula County will use these ballots and equipment in 1968. The Legislative Council was directed to review local election laws and to consider combining local elections with the November general elections.

Labor

Levels of workmen's compensation were increased in all categories including maximum death benefits to dependents. It was further provided that lump-

sum workmen's compensation payments would not be prorated in a manner to bar collection of unemployment benefits. Proposed state minimum wage legislation was again defeated, but the "blue-eyed nurses" bill to authorize collective bargaining during a two-year trial period was finally adopted after defeat or veto in previous sessions. No "right-to-work" legislation was introduced in the 1967 session.

Code of Criminal Procedure

A thorough-going revision of the Code of Criminal Procedure was enacted. The recodification sought to reduce technical obstructions to the administration of criminal justice and to eliminate elements of surprise in criminal trials by expanding the procedures for pre-trial discovery of evidence. Administrative techniques were revised to meet emerging federal standards regarding defendant's rights respecting search and seizure of evidence, arrest, and counsel.

Public School Financing

State general fund appropriations for the foundation program were increased \$322,000 over the previous biennium and approximately \$4 million in the public school equalization fund was reappropriated. The legislature estimated that an addition \$1 million would be available from permanent school funds. Permissible levels of local school budgeting were raised so that county levies could meet additional demands for school financing beyond the state support. Montana Education Association spokesmen said county levies for school support would increase \$13 million to \$15 million over the previous biennium because the legislature had not appropriated the full level of state support for the foundation program.

Ellis Waldron, Bureau Director
Emilie Loring, Research Associate



The Bureau of Government Research

The Bureau of Government Research is an adjunct to the Department of Political Science, University of Montana, serving its faculty and students as a vehicle for research and publication. The Bureau was established in 1957 but its operations were suspended from 1961 to 1966. The name of the institution was changed from Montana State University to the University of Montana July 1, 1965.

Dr. Ellis Waldron, Professor of Political Science, is now Director of the Bureau, and wishes to express appreciation to many agencies which have retained the Bureau on mailing and exchange lists.

An occasional series of pamphlets and monographs was initiated in 1958; the following items, now out of print, were published and the numbered series will be continued.

Directory of Executive and Administrative Agencies of the State of Montana. 24 pages, 1958.

A Digest of Taxes for State Purposes in Montana, by Roy J. W. Ely. 59 pages, 1959, published jointly with the Bureau of Business and Economic Research.

No. 1. *Montana State Documents, a Preliminary Bibliography,* by Lucille Speer. 56 pages, 1958.

No. 2. *Proceedings of the First Montana Planning Institute, Sept. 18-19, 1959.* 79 pages, 1960.

No. 3. *Proceedings of the Second Montana Planning Institute, Sept. 16-17, 1960.* 47 pages, 1960.

No. 4. *Municipal Facilities and Services in Montana: A Survey of 108 Incorporated Cities and Towns,* by Ellis Waldron, in cooperation with the Montana Municipal League. 76 pages, 1961.