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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

EDUCATION AND PUBLIC LANDS COMMITTEE PROPOSAL

No. X

Date Reported: February 22, 1972

 Chairman  
 Vice Chairman

500 East Broadway  
Helena, Montana 59601



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Date: February 22, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Education and Public Lands Committee

Ladies and Gentlemen:

The Education and Public Lands Committee submits herewith proposed new Articles on Education, Public Lands, and Investments. The proposed Articles are intended to replace the Education, Public Lands, and Trust and Legacy Fund Articles in the present constitution.


Throughout its hearings the committee heard a great deal of thoughtful, well-researched testimony and benefited fully from the many sources of information provided by interested persons and groups. Realizing the crucial importance of education in the state, the committee was guided by the desire to insure a solid foundation for public education in Montana and to allow for the flexibility essential to the educational process. The committee resolved almost all questions with few dissents. On two issues, however, the questions of public aid to sectarian schools and investments, the committee failed to reach agreement. The dissenting members are presenting minority reports included herein.

In signing this majority report a committee member does not necessarily endorse each and every statement in it.

The committee utilized the services of the following people in addition to its members: Sally Watson, secretary, Bruce Sievers, research analyst, and Jeffrey Rupp, Maureen Callahan, Nancy Lien and John Murphy, interns.

Respectfully submitted,

  
RICHARD J. CHAMPOUX, Chairman

  
ROBERT L. NOBLE, Vice-Chairman

MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

2 That there be a new Article on Education to read as  
3 follows:

4  
5 ARTICLE \_\_\_\_\_

6 EDUCATION

7 Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE.

8 It shall be the goal of the people of Montana to provide  
9 for the establishment of a system of education which will  
10 develop the full educational potential of each person.  
11 Equality of educational opportunity shall be guaranteed to  
12 each person of the state.

13 The legislature shall provide for a system of high  
14 quality free public elementary and secondary schools. The  
15 legislature may also provide for other educational institu-  
16 tions, public libraries and educational programs as are  
17 deemed desirable. It shall be the duty of the legislature  
18 to provide by taxation or other means and to distribute in  
19 an equitable manner funds sufficient to insure full funding  
20 of the public elementary and secondary school system.

21 Section 2. PUBLIC SCHOOL FUND. The public school  
22 fund of the state shall consist of the proceeds of such  
23 lands as have heretofore been granted, or may hereafter be  
24 granted, to the state by the general government known as  
25 school lands; and those granted in lieu of such; lands  
26 acquired by gift or grant from any person or corporation  
27 under any law or grant of the general government; and of  
28 all other grants of land or money made to the state from  
29 the general government for general educational purposes,  
30 or where no other special purpose is indicated in such grant;



1 all estates, or distributive shares of estates that may  
2 escheat to the state; all unclaimed shares and dividends  
3 of any corporation incorporated under the laws of the state,  
4 and all other grants, gifts, devises or bequests made to  
5 the state for general educational purposes.

6 Section 3. PUBLIC SCHOOL FUND INVIOLEATE. The public  
7 school fund shall forever remain inviolate, guaranteed by  
8 the state against loss or diversion, to be invested under  
9 the restrictions to be provided by law.

10 Section 4. BOARD OF LAND COMMISSIONERS. The governor,  
11 superintendent of public instruction, secretary of state and  
12 attorney general shall constitute the state board of land  
13 commissioners, which shall have the direction, control,  
14 leasing, exchange and sale of the school lands of the state,  
15 and the lands granted or which may hereafter be granted for  
16 the support and benefit of the various state educational  
17 institutions, under such regulations and restrictions as  
18 may be prescribed by law.

19 Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five  
20 per centum (95%) of all the interest received on the school  
21 funds of the state, and ninety-five per centum (95%) of  
22 all rents received from the leasing of school lands and  
23 of all other income from the public school funds shall be  
24 equitably apportioned annually to public elementary and  
25 secondary schools as provided by law.

26 The remaining five per centum (5%) of all the interest  
27 received on the school funds of the state, and the remaining  
28 five per centum (5%) of all the rents received from the  
29 leasing of school lands and of all other income from the  
30 public school funds, shall annually be added to the public

1 school funds of the state and become and forever remain  
2 an inseparable and inviolable part thereof.

3 Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.

4 Neither the legislative assembly, nor any county,  
5 city, town, or school district, or other public corpor-  
6 ations, shall ever make directly or indirectly, any  
7 appropriation, or pay from any public fund or monies what-  
8 ever, or make any grant of lands or other property in aid  
9 of any church, or for any sectarian purpose, or to aid in  
10 the support of any school, academy, seminary, college,  
11 university, or other literary, scientific institution,  
12 controlled in whole or in part by any church, sect or  
13 denomination whatever.

14 Section 7. NON-DISCRIMINATION IN EDUCATION. No  
15 religious or partisan test or qualification shall ever be  
16 required of any person as a condition of admission into  
17 any public educational institution of the state, either as  
18 teacher or student; nor shall attendance be required at  
19 any religious service whatever, nor shall any sectarian  
20 tenets be taught in any public educational institution of  
21 the state; nor shall any person be debarred admission to  
22 any public institution of learning on account of sex,  
23 race, creed, religion or national origin.

24 Section 8. SCHOOL ELECTIONS. The legislative  
25 assembly shall provide for elections of school district  
26 trustees.

27 Section 9. STATE BOARD OF EDUCATION. The board of  
28 public education and the board of regents of higher educa-  
29 tion, as hereafter designated shall together constitute  
30 the state board of education which shall meet periodically

1 on matters of mutual concern. In case of a tie vote at  
2 such meeting the superintendent of public instruction may  
3 cast a vote.


4 Section 10. BOARD OF PUBLIC EDUCATION. There shall  
5 be a board of public education which shall exercise general  
6 supervision over the public school system and such other  
7 public educational institutions as assigned by law. Said  
8 board shall consist of seven members appointed by the  
9 governor with confirmation of the senate to six year over-  
10 lapping terms. The governor and state superintendent of  
11 public instruction shall be ex officio non-voting members  
12 of the board. The duties of the superintendent of public  
13 instruction shall be prescribed by law.

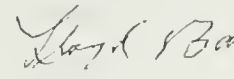
14 Section 11. BOARD OF REGENTS OF HIGHER EDUCATION.  
15 There shall be a board of regents of higher education, a  
16 body corporate, which shall govern and control the academic,  
17 financial, and administrative affairs of the Montana univer-  
18 sity system, and shall supervise and coordinate other  
19 public educational institutions which may be assigned by  
20 law. Said board shall consist of seven members appointed  
21 by the governor to six year overlapping terms, subject to  
22 confirmation by the senate, under regulations provided by  
23 law. The board shall appoint its executive officer and  
24 prescribe his term and duties. The governor and superin-  
25 tendent of public instruction shall be ex officio non-voting  
26 members of this board.

27 Section 12. STATE UNIVERSITY FUNDS. The funds of the  
28 state university and of all other state institutions of  
29 learning, from whatever source accruing, shall forever remain  
30 inviolate and sacred to the purpose for which they were

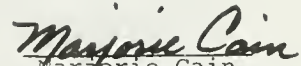
1 dedicated. The various funds shall be respectively  
2 invested under such regulations as may be prescribed by  
3 law, and shall be guaranteed by the state against loss or  
4 diversion. The interest of said invested funds, together  
5 with the rents from leased lands or properties shall be  
6 devoted to the maintenance and perpetuation of these  
7 respective institutions.

8  
9   
10 Richard Champoux, Chairman

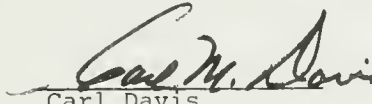
11   
12 Robert Noble, Vice Chairman

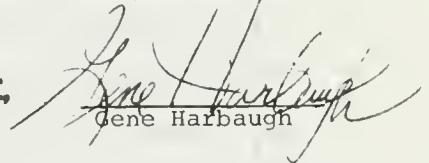
13  
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15 Lloyd Barnard

  
16 William Burkhardt

  
17 Marjorie Cain

18   
19 Max Conover

  
20 Carl Davis

  
21 Gene Harbaugh

22   
23 Dan Harrington

  
24 Robert Woodmansey

  
25 John Toole

COMMENTS ON MAJORITY PROPOSAL

Education occupies a place of cardinal importance in the public realm. The educational system is charged with the task of shaping and cultivating the mind of each succeeding generation and with developing the capacities for cultural and technical advancement of society. State and local governments devote a far larger share of their financial resources to the support of education than to any other single public activity.

Because of this overriding importance of education, the committee recognizes the awesome task of providing the appropriate constitutional provisions necessary to protect and nurture the public educational system. Each aspect of existing and proposed constitutional language was thoroughly and deeply reflected upon by the committee in light of present and future needs. Fundamental to the committee's considerations were the twin goals of protecting the integrity of a quality educational system and allowing for flexibility to meet changes as yet unknown but which will certainly occur in future developments in the field of learning.

In light of these aims, the committee has preserved those provisions in the existing constitution which have proven worth and which pose no hindrance to potential developments. On the other hand, the committee has made revisions in those places where it saw a definite need for constitutional improvement. Some of these changes have to do with basic aims of the educational system; others are concerned with structural or administrative adaptations to changing conditions in education. The most significant revisions are a clear statement of educational goals of the state, a

1 mandate for the support of education allowing increased  
2 financial flexibility, deletion of antiquated age and school  
3 term restrictions, and a revised administrative structure  
4 for both the public school system and for higher education.

5 The committee views these proposed changes as vital  
6 to the quality and efficiency of education in Montana.  
7 The proposed article provides appropriate guarantees to  
8 the viability of the public school system, while leaving the  
9 way open to future transformations in the educational process.

10 *Section 1. EDUCATIONAL GOALS AND DUTIES OF THE STATE.*

11 *It shall be the goal of the people of Montana to provide*  
12 *for the establishment of a system of education which will*  
13 *develop the full educational potential of each person.*  
14 *Equality of educational opportunity shall be guaranteed to*  
15 *each person of the state.*

16 *The legislature shall provide for a system of high*  
17 *quality free public elementary and secondary schools. The*  
18 *legislature may also provide for other educational institu-*  
19 *tions, public libraries and educational programs as are*  
20 *deemed desirable. It shall be the duty of the legislature*  
21 *to provide by taxation or other means and to distribute in*  
22 *an equitable manner funds sufficient to insure full funding*  
23 *of the public elementary and secondary school system.*

24 COMMENTS

25 The proposed section by the committee would replace  
26 Sections 1, 6 and 7 of the existing constitution. The  
27 committee desires to broaden the goals set forth for an  
28 educational system beyond those which might have been  
29 appropriate for public schools at the time of writing the  
30 existing constitution. The horizons of education are



1 constantly expanding. There has been a growing recognition  
2 of educational rights which extend beyond arbitrary age  
3 and school term limitations. Society has accepted the duty  
4 to support a quality educational system, and courts have  
5 stressed that it must be made available on approximately  
6 equal terms. Thus, the committee proposes a new section  
7 which takes into account the widened perspectives embodied  
8 in these developments.

9       The first sentence, "It shall be the goal of the  
10 people of Montana to provide for the establishment of a  
11 system of education which will develop the full educational  
12 potential of each person," is appropriate as a statement  
13 of purpose for education in the state. Learning is gradually  
14 being recognized as a process which extends from the early  
15 months till the late years of life. A long range goal of  
16 the state should be to foster and support this learning  
17 process for all citizens to the maximum level possible in  
18 any given era. The committee realizes that economic and  
19 human resources may be insufficient at present to promote  
20 learning "to the full educational potential of each person,"  
21 but it feels strongly that the goal should be set forth as  
22 an ideal to serve as a guide for educational development  
23 in the state. All members of society should be ultimately  
24 eligible for the benefits of enlightenment and skills  
25 acquired through the educational process.

26       The subject of "equal educational opportunity" has  
27 become a particularly important doctrine in modern education.  
28 Recent federal, district and state court decisions have  
29 interpreted the Fourteenth Amendment to the federal Con-  
30 stitution as applying to educational financing. Under this

1 doctrine, the state must show a compelling interest to  
2 maintain a classification system by wealth which inter-  
3 feres with the individual's fundamental right to an educa-  
4 tion. By this standard the courts have ruled that the  
5 school district financing systems in four states violate  
6 equal protection.

7 Montana's school financing system is similar to those  
8 declared unconstitutional in the states where challenges  
9 have been made. The same vast discrepancies in tax burdens  
10 and educational support exist in Montana as exist elsewhere.  
11 A recent study by the Office of the Superintendent of  
12 Public Instruction (A Study of Basic Educational Program  
13 Funding Methodology in Montana, January 1972) shows that  
14 Montana school district wealth per ANB varies by as much as  
15 a ratio of 10,000 to 1. The enormous differences in tax  
16 bases mean that many rich districts can provide much better  
17 educational facilities with lower tax rates. Some poor  
18 districts must tax their residents three or four times as  
19 much as rich districts to provide less than half as much  
20 money per student. Clearly, the existing school founda-  
21 tion program in Montana does not attain its aim of equali-  
22 zing educational burdens and benefits. Indeed, the study  
23 shows that in the state as a whole, foundation program  
24 expenditures actually subsidize wealthier districts more  
25 than poorer districts, aggravating factors which already  
26 tend to make education a function of wealth.

27 This conforms to a national pattern in which states  
28 spend on the average twice as much to educate the children  
29 of the rich as to educate the children of the poor. Other  
30 forms of barriers to equal educational opportunity, such



1 as cultural or linguistic factors in minority groups, may  
2 also hinder the development of children on an equal basis.  
3 Clearly the educational system must be directed to the  
4 elimination of blatant injustices which may predetermine  
5 a lifelong disadvantage. The principle of equal educational  
6 opportunity, as a corollary to the right to equal protection  
7 of the laws, stands as a fundamental maxim for the public  
8 educational system.

9       It has been suggested that constitutional statement  
10 of equal educational opportunity might be a mandate for  
11 the attainment of an impossible ideal, and that such a  
12 statement of principle could open the door to a welter  
13 of demands for making public education absolutely equal  
14 for every person in society on every level. This inter-  
15 pretation, however, would represent an extreme and absurd  
16 misconstruction of the meaning of the principle. The  
17 principle of "equal educational opportunity" is no more  
18 an abstract absolute than is the right to "equal protection  
19 of the laws" or any other constitutionally guaranteed right  
20 or freedom. No right is absolute; each must be considered  
21 in connection with other rights and freedoms and in terms  
22 of the social context to which it is applied.

23       In keeping with the rationale articulated in Serrano  
24 v. Priest and other court decisions in this area, the  
25 committee agrees with the exemplary words of a landmark  
26 U.S. Supreme Court decision:

27       In these days, it is doubtful that any child  
28 may reasonably be expected to succeed in life  
29 if he is denied the opportunity of an education.  
30 Such an opportunity, where the state has undertaken  
to provide it, is a right which must be made  
available to all on equal terms. [Brown v. Board  
of Education. 347 U.S. 493 (1954)]

1 Likewise, the California Supreme Court held:

2 [I]ts uniqueness among public activities clearly demon-  
3 strates that education must respond to the command of  
the equal protection. [Serrano v. Priest, 96 Cal 601]

4 Both Brown and Serrano attacked the substantial disparities  
5 in the educational systems under review and concluded that  
6 neither race nor wealth could be used to impair the equal  
7 right of children to an education. Neither of these cases  
8 mandated some sort of precise equality of education for the  
9 entire lifespan of the human being. The fundamental principle  
10 established, however, is that every child should have approxi-  
11 mately the same opportunity to receive an adequate basic educa-  
12 tion. What this means in practice will be legislatively  
13 defined in terms of prevailing social conditions.

14 The sentence, "the legislature shall provide for a  
15 system of high quality free public elementary and  
16 secondary schools," is a mandate to the legislature to  
17 insure the existence of a quality basic educational system.  
18 The word "quality" is an instruction to the legislature  
19 to provide not simply a minimum educational system, but  
20 one which meets contemporary needs and produced capable,  
21 well-informed citizens. The word "free" is understood by  
22 the committee to mean that those aspects of an elementary  
23 or secondary education shall be free from cost which are  
24 essential to those courses required by the school for  
25 graduation.

26 The committee also believes that other educational  
27 institutions and programs and libraries are important  
28 parts of educational activity in the state. The particular  
29 sorts of institutions and programs, however, must be  
30 left for the legislature to determine, since changing

1 conditions may require a variety of endeavors.

2 The final sentence in Section 1 provides a vital  
3 mandate to the legislature for the support of the public  
4 school system. The committee feels that a strong  
5 directive is necessary to insure the support of the public  
6 elementary and secondary school system. The particular  
7 type of financing system is a matter properly left to  
8 legislative determination, but the fundamental principles  
9 upon which such a system is based are matters of a con-  
10 stitutional nature. The committee specifies three tenets  
11 of a school financing system: (1) that taxation for  
12 such a system be equitably apportioned; (2) that the  
13 school funds be distributed in an equal manner; and  
14 (3) that the funds supplied be sufficient to insure full  
15 funding of the system.

16 The first two of these principles follow from the  
17 meaning of "equal educational opportunity." Two aspects  
18 of equal opportunity have been emphasized in the judicial  
19 decisions: equality of tax burden for the support of  
20 education and equality of distribution of educational funds.  
21 A wide variety of particular school financing plans, from  
22 a wholly state-financed program to a plan for substantial  
23 redistricting, have been suggested to meet these criteria.  
24 The selection of which plan best suits the situation in  
25 Montana is a matter for the legislature to decide. The  
26 constitutional language solely establishes norms for the  
27 evaluation of such plans.

28 The third principle set forth by the committee, that  
29 of full funding, is a mandate to insure that the public  
30 school system will exist on a plane of equal quality

1 rather than of equal poverty. The maxim of "full funding"  
2 is intended by the committee to require the establishment  
3 of the school system on a realistic basis.

4 Once the needs for a basic quality system of ele-  
5 mentary and secondary schools have been realistically  
6 assessed, the state has the obligation to guarantee that  
7 this minimum basic program be fully funded. This require-  
8 ment would substitute rationality and equity for the  
9 confusion and injustice which have often plagued school  
10 finance systems in the past.

11 *Section 2. PUBLIC SCHOOL FUND. The public school*  
12 *fund of the state shall consist of the proceeds of such*  
13 *lands as have heretofore been granted, or may hereafter*  
14 *be granted, to the state by the general government known*  
15 *as school lands; and those granted in lieu of such; lands*  
16 *acquired by gift or grant from any person or corporation*  
17 *under any law or grant of the general government; and of*  
18 *all other grants of land or money made to the state from*  
19 *the general government for general educational purposes,*  
20 *or where no other special purpose is indicated in such*  
21 *grant; all estates, or distributive shares of estates that*  
22 *may escheat to the state; all unclaimed shares and dividends*  
23 *of any corporation incorporated under the laws of the*  
24 *state, and all other grants, gifts, devises or bequests*  
25 *made to the state for general educational purposes.*

#### 26 COMMENTS

27 In securing assured sources of support for the  
28 educational system, the committee agreed that constitutional  
29 protection should be supplied to the public school fund.  
30 Section 2 in the existing constitution has provided this

1 protection by itemizing the components of the fund and  
2 unequivocally specifying that these contributing funds  
3 shall be used for education. The name "public school  
4 fund" which appears in this section is adopted as the  
5 name to be used consistently hereafter in the constitution.

6 *Section 3. PUBLIC SCHOOL FUND INVIOLETE. The public*  
7 *school fund shall forever remain inviolate, guaranteed*  
8 *by the state against loss of diversion, to be invested*  
9 *under the restrictions to be provided by law.*

#### 10 COMMENTS

11 This section is identical to Section 3 of the  
12 existing constitution, with the exception that the  
13 constitutional investment restrictions are removed. The  
14 committee is of the opinion that the investment policy  
15 for the public fund is properly a legislative matter.  
16 Beyond guaranteeing the inviolate character of the fund,  
17 a constitutional provision cannot anticipate investment  
18 policies appropriate to changing conditions. Moreover,  
19 the existing language, "to be invested, so far as possible,  
20 in public securities within the state, including school  
21 district bonds, issued for the erection of school buildings,"  
22 is both ambiguous and overly restrictive. The benefit  
23 to the schools might be much greater if in any given  
24 period the public school fund were otherwise securely  
25 invested. Flexibility requires that such policy decisions  
26 be made by the legislature.

27 *Section 4. BOARD OF LAND COMMISSIONERS. The governor,*  
28 *superintendent of public instruction, secretary of state*  
29 *and attorney general shall constitute the state board of*  
30 *land commissioners, which shall have the direction, control,*

1 leasing, exchange and sale of the school lands of the  
2 state, and the lands granted or which may hereafter be  
3 granted for the support and benefit of the various state  
4 educational institutions, under such regulations and  
5 restrictions as may be prescribed by law.

#### 6 COMMENTS

7 This section remains almost unchanged from the  
8 original constitution. A board composed of four elective  
9 officials, the governor, superintendent of public instruction,  
10 attorney general, and secretary of state, serves an  
11 important function in supervising the management of the  
12 state school lands and the income derived from these lands.  
13 The board while operating under this constitutional pro-  
14 vision, has worked well in the past and would appear to  
15 be able to do the same for the foreseeable future. The  
16 only change deemed desirable at this time is the addition  
17 of the word "exchange" to the list of activities within  
18 the board's power. The need for this has become evident  
19 in cases where the state has been prevented from making  
20 advantageous exchanges of land by the omission of this  
21 power from the present constitutional provision.

22 The committee also considered revising the membership  
23 of the board, and particularly reducing the number of  
24 members to three by the omission of the Secretary of State,  
25 but decided that the four constitutionally named elective  
26 officers were an important source of direct popular  
27 control and that an even-numbered board requiring a  
28 majority of three for a decision would emphasize the  
29 principle of caution over that of expediency.

30 Section 5. PUBLIC SCHOOL FUND REVENUE. Ninety-five



1 per centum (5%) of all the interest received on the school  
2 funds of the state, and ninety-five per centum (95%) of  
3 all rents received from the leasing of school lands and  
4 of all other income from the public school funds shall be  
5 equitably apportioned annually to public elementary and  
6 secondary schools as provided by law.

7 The remaining five per centum (5%) of all the interest  
8 received on the school funds of the state, and the remaining  
9 five per centum (5%) of all the rents received from the  
10 leasing of school lands and of all other income from the  
11 public school funds, shall annually be added to the public  
12 school funds of the state and become and forever remain  
13 an inseparable and inviolable part thereof.

#### 14 COMMENTS

15 The proposed Section 5 is a shortened and revised  
16 version of Section 5 in the present constitution. The  
17 intent of the provision, to constitutionally protect the  
18 interest and income from the public school fund, is  
19 important; however the particular restrictions as to its  
20 distribution to schools are considered obsolete in light  
21 of present conditions. The language concerning the portions  
22 to be distributed and that which is to be reinvested re-  
23 mains the same as in the present constitution. The methods  
24 of distribution previously specified are replaced by a  
25 general phrase "shall be equitably apportioned annually  
26 to elementary and secondary schools as provided by law."

27 The replacement language provides the desired  
28 flexibility to the legislature to develop school financing  
29 programs in tune with current necessities. Particularly  
30 relevant to this change is the trend across the nation,

1 in accordance with recent court decisions under the equal  
2 protection doctrine, to provide more equitable school  
3 financing systems. The "flat grant" type of aid provided  
4 under the old method of distributing income and interest  
5 to all school districts on a census basis is clearly anti-  
6 equalizing under the standards discussed in the commentary  
7 to Section 1. By specifying only that the distribution  
8 must be "equitable" the new language allows the legislature  
9 to determine the type of distribution which will attain  
10 this goal.

11 Restrictions in the form of specified districts, age,  
12 and school terms which may have been applicable at the  
13 time of writing of the 1889 constitution, are no longer  
14 meaningful. Rather than attempt to apply new restrictions  
15 more in keeping with the contemporary school system, the  
16 committee determined that it was preferable to allow for  
17 changing needs as interpreted by the legislature by design-  
18 ating only a broad standard, namely "equitably apportioned  
19 as provided by law."

20 A further element in the distribution system authorized  
21 by the existing provision is the specification that the  
22 interest and income money be distributed to the "several  
23 school districts." This has been interpreted in the past  
24 to mean that funds deriving from this source be granted  
25 only to elementary schools, presumably because elementary  
26 schools were the only public schools in existence at the  
27 time when this provision was written. In keeping with  
28 its intention to expand legislative possibilities in  
29 educational finance, as discussed in the commentary on  
30 Section 1, the committee has replaced the phrase



1 "several school districts" with "public elementary and  
2 secondary schools." This would change the existing  
3 distribution system to include high schools as recipients  
4 of interest and income money. The immediate result is  
5 anticipated by the Office of the Supcrintendent of Public  
6 Instruction to result in a net saving of administrative  
7 costs to the state. (See appendix E.)

8 *Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.*

9 *Neither the legislative assembly, nor any county, city,*  
10 *town, or school district, or other public corporations,*  
11 *shall ever make directly or indirectly, any appropriation,*  
12 *or pay from any public fund or monies whatever, or make*  
13 *any grant of lands or other property in aid of any church,*  
14 *or for any sectarian purpose, or to aid in the support*  
15 *of any school, academy, seminary, college, university,*  
16 *or other literary, scientific institution, controlled in*  
17 *whole or in part by any church, sect or denomination*  
18 *whatever.*

19 COMMENTS

20 After long and serious consideration, a majority  
21 of the committee decided to retain the section in the  
22 existing constitution (Article XI, Section 8) which  
23 strongly prohibits direct or indirect aid from any public  
24 fund of the state to any sectarian educational institution  
25 or for any sectarian purpose. The committee recognizes  
26 the merit and thoughtfulness of arguments offered for and  
27 against any change in this section, but agrees fundamentally  
28 that any alteration in wording might jeopardize the pre-  
29 carious historical balance which has been struck between  
30 opposing doctrines and countervailing principles.

1       The following major points are the most important  
2 reasons for the committee's decision:

3       (1) The primary and significant advantage secured by the  
4 present provision is the unequivocal support it provides  
5 for a strong public school system. The traditional separa-  
6 tion between church and state, an important part of the  
7 American social framework, has also become a fundamental  
8 principle of American education. The growth of a strong, uni-  
9 versal, and free educational system in the United States has  
10 been due in part to its exclusively public character. Under  
11 federal and state mandates to concentrate public funds in pub-  
12 lic schools, the educational system has grown strong in an  
13 atmosphere free from divisiveness and fragmentation. Any diver-  
14 sion of funds or effort from the public school system would  
15 tend to weaken that system in favor of schools established for  
16 private or religious purposes.

17       (2) Education is primarily a function of the state and  
18 is properly regulated by the state. The state is therefore  
19 free to impose its own restrictions and rules upon the  
20 use of public funds for education. Although the Montana  
21 provision is more stringently prohibitive than is the  
22 federal First Amendment and provisions in some other  
23 states, this is within a state's prerogative. A state  
24 may prohibit forms of state aid which might be permissible  
25 under federal Supreme Court rulings.

26       (3) Any change in the present provision, whether  
27 substantial or merely formal, might endanger passage of  
28 the entire constitution. The church-state issue, which is  
29 interwoven with the question of public aid to nonpublic  
30 schools, stirs deeply held emotional feelings in various

1 sectors of the public. The emotionalism aroused over  
2 potential debates on this question might obscure other  
3 important issues in education and in the constitution as  
4 a whole. The change in this area proposed in New York's  
5 1967 constitution is thought to have been a significant  
6 contributing factor to the constitution's defeat at the  
7 polls. A large number of witnesses, representing various  
8 religious and nonreligious organizations, testified  
9 emphatically against any change in the present provision.

10 (4) Public aid to sectarian schools which might  
11 result from a relaxation of the prohibition also poses a  
12 potential threat to religion. The control which comes  
13 with aid could excessively involve the state in religious  
14 matters and could inadvertently favor one religious group  
15 over another. Several witnesses testified that they  
16 opposed aid not only from the standpoint of the protection  
17 of the state from religious influence but also from the  
18 standpoint of the protection of religion from political  
19 influence.

20 The above reasons apply to the decision by the  
21 majority of the committee to preserve the present provision,  
22 rather than to adopt the language of the federal First  
23 Amendment or make any other change in the existing provision.

24 A second alternative considered by the committee  
25 was to exclude federal funds administered by the state  
26 from the applicability of the provision. A fundamental  
27 concern expressed by some witnesses before the committee  
28 was that some forms of federal aid to nonpublic schools,  
29 particularly of the type envisaged in "revenue sharing"  
30 programs, are or would be prohibited under the existing

1 provision. The committee does not agree that this poses  
2 a realistic problem. As indicated in Appendix F, students  
3 in nonpublic educational institutions in the state are  
4 now receiving the benefit of a significant amount of  
5 federal aid, some of which is administered by the state.  
6 It is the majority of committee's opinion that presently  
7 operating federal aid programs in education are not  
8 being significantly affected by the constitutional pro-  
9 vision. As to future federal programs, the committee  
10 feels that precedent shows that potential problems can be  
11 resolved without a change in the constitutional provision.  
12 No specific case was brought to the committee's attention in  
13 which federally granted funds have been denied in Montana  
14 to nonpublic schools because of the operation of the  
15 existing constitutional provision.

16 *Section 7. NON-DISCRIMINATION IN EDUCATION. No*  
17 *religious or partisan test or qualification shall ever*  
18 *be required of any person as a condition of admission into*  
19 *any public educational institution of the state, either*  
20 *as teacher or student; nor shall attendance be required*  
21 *at any religious service whatever, nor shall any sectarian*  
22 *tenets be taught in any public educational institution*  
23 *of the state; nor shall any person be debarred admission*  
24 *to any public institution of learning on account of sex,*  
25 *race, creed, religion or national origin.*

26 COMMENTS

27 This section is a broadened version of the present  
28 Section 9. A statement specifically banning discrimina-  
29 tory practices in education provides a necessary specifi-  
30 cation with respect to teachers and students of

1 nondiscrimination principles broadly articulated in the  
2 bill of rights. The committee feels that the principle  
3 set forth in the last sentence of the present section  
4 i.e., "nor shall any person be debarred admission to any  
5 of the collegiate departments of the university on account  
6 of sex," represents an arbitrary limitation on the general  
7 principle of nondiscrimination in admission policies.  
8 The committee has therefore broadened the language to in-  
9 clude all public educational institutions under the pro-  
10 tection of the provision and to prohibit other kinds of  
11 possible discrimination.

12 The committee also considered carefully the language  
13 of the phrase, "nor shall any sectarian tenets be taught  
14 in any public educational institution," and decided against  
15 any change in wording. There has been no record of diffi-  
16 culty in the interpretation of the meaning of this pro-  
17 vision, which clearly is not intended to restrict objective  
18 learning about religious principles, but rather to prohibit  
19 the active promotion in a public school of religion or of  
20 any particular religious doctrine. The existing language  
21 adequately expresses this principle.

22 *Section 8. SCHOOL ELECTIONS. The legislative assembly*  
23 *shall provide for elections of school district trustees.*

#### 24 COMMENTS

25 This section is similar to Section 10 of the existing  
26 constitution, but changes its effect. The original intent  
27 of the present Section 10 was to segregate school elections  
28 from partisan elections. The committee feels that there  
29 are other reasons which negate this original intent and  
30 which dictate that decisions on this matter should be of

1 a legislative rather than a constitutional nature. First,  
2 it is questionable whether the holding of separate  
3 elections has the effect of insulating school issues from  
4 partisan ones. Other nonpartisan issues and candidates  
5 appear on the same ballot with partisan ones. Moreover,  
6 partisanship of various sorts may play a role in a school  
7 election whether held separately or not. At least one  
8 locality in Montana officially recognizes special parties  
9 just for the purposes of such school elections.

10 Secondly, the holding of separate school elections  
11 causes most localities a great deal of extra expense which  
12 could be better spent on education itself. One delegate  
13 informed the committee that her community spent \$10,000  
14 or more on every school election. The committee feels  
15 that such expenses are needless, particularly if the  
16 separate election does not accomplish its intended aims.

17 The proposed new section thus allows for flexibility  
18 by leaving the specification of election dates to the  
19 legislature, but it still reaffirms the importance of a  
20 constitutional mandate that such elections shall continue  
21 to be held. The committee understands the vital importance  
22 of the principle of local control of schools and desires  
23 to insure the continuation of the system of local election  
24 of school trustees. These local school elections are an  
25 essential and irreplaceable part of the education system  
26 and their existence must be constitutionally guaranteed.

27 *Section 9. STATE BOARD OF EDUCATION. The board of*  
28 *public education and the board of regents of higher educa-*  
29 *tion, as hereafter designated shall together constitute*  
30 *the state board of education which shall meet periodically*



1 on matters of mutual concern. In case of a tie vote at  
2 such meeting the superintendent of public instruction may  
3 cast a vote.

#### 4 COMMENTS

5 Sections 9, 10, and 11 of the proposed new article  
6 deal with the state administrative structure for education.  
7 Together, these sections provide a substantially revised  
8 framework for the operation of the educational system.  
9 Under the authority of Section 11 of the existing con-  
10 stitution, a single state board of education presently  
11 exercises "supervision and control" over the entire state  
12 educational system, sitting as the state board of education  
13 on matters concerning the public school system and as  
14 ex officio board of regents on university matters. The  
15 proposed sections would replace this structure with two  
16 boards which would separately supervise higher education  
17 and the public school system, but would meet jointly as  
18 the state board of education on matters of mutual concern.

19 The proposed structure would provide a much needed  
20 reform in the administration of education in Montana. The  
21 state board of education, as it presently exists, operates  
22 under a provision written at a time (1889) when the  
23 educational system was fundamentally different from what  
24 it is today. The educational system of Montana in the  
25 nineteenth century consisted only of primary grammar schools  
26 and a newly founded state university. Today it consists  
27 of a universal system of elementary and secondary schools  
28 and a public higher educational system composed of two  
29 major universities, four colleges, and three community  
30 colleges. In 1889 there were less than 12,000 students in

1 the public educational system; in 1970 there were more  
2 than 200,000 students enrolled. At the time statehood  
3 was granted Montana, the Office of the Superintendent of  
4 Public Instruction consisted of the Superintendent and  
5 a clerk who performed mainly information-gathering  
6 functions in connection with local districts; at present  
7 the Office has a staff of 162 and administers more than  
8 \$52 million funds for a vast array of state educational  
9 programs.

10 The provision for a board which was appropriate to  
11 the 1889 situation is clearly not appropriate today. It  
12 is not even clear that the state board of education was  
13 ever intended to serve as the board for the entire  
14 educational system. The phrase, "and the various other  
15 state educational institutions" in the existing Section 11,  
16 appears to refer only to what are commonly thought to be  
17 state-run institutions, i.e. state normal schools, school  
18 for the deaf and blind, and so forth. It was only by  
19 virtue of a Montana Supreme Court interpretation of this  
20 phrase in State v. Cooney (102 Mont. 521 [1936]) that this  
21 section was specifically ruled to apply to the elementary  
22 and secondary school system.

23 In practice, the state board of education has devoted  
24 the great majority of its time to matters of higher educa-  
25 tion. One important study of Montana education observes  
26 that there is a kind of informal division of labor between  
27 the board and the state superintendent, such that the lower  
28 schools are looked after by the superintendent and that  
29 the board sees its duties primarily in the field of higher  
30 education. The study concludes:



1 The result is that the Board's functions in  
2 public education become more of the nature of  
3 "trouble shooting" and too little of consis-  
4 tent long-range planning, policy formulation,  
5 appraisal, and the like. (Montana Taxation-  
6 Education Commission, Public Schools of Montana,  
7 1958, p.2).

8 One major reason, therefore, for the creation of a  
9 two-board structure is the establishment of a board that  
10 will be specifically qualified for and concerned with the  
11 problems of elementary and secondary education and other  
12 institutions which may be assigned by law. The correlate  
13 of this structure is the establishment of a separate board  
14 for higher education which will be similarly qualified  
15 for and attuned to the particular problems of higher educa-  
16 tion.

17 The necessary coordination between these two separate  
18 boards would occur in the joint board provided for in the  
19 proposed Section 9. This joint board, the state board  
20 of education, would meet periodically to act on matters  
21 of mutual concern to both sectors of education.

22 Further reasons for the reorganization of the boards  
23 of education are presented in the following sections.

24 *Section 10. BOARD OF PUBLIC EDUCATION. There shall*  
25 *be a board of public education which shall exercise*  
26 *general supervision over the public school system and such*  
27 *other public educational institutions as assigned by law.*  
28 *Said board shall consist of seven members appointed by*  
29 *the governor with confirmation of the senate to six year*  
30 *overlapping terms. The governor and the state superin-*  
*tendent of public instruction shall be ex officio non-*  
*voting members of the board. The duties of the super-*  
*intendent of public instruction shall be prescribed by law.*

1        This section creates the board of public education  
2 and prescribes its membership and responsibility. As  
3 described in the comments to the preceding section, the  
4 greatly expanded activities, personnel, and funding in-  
5 volved in elementary and secondary education require that  
6 this crucial sector of education have its own administra-  
7 tive board. The largest share of state funds for any one  
8 purpose go to elementary and secondary education. The  
9 state administers over 25 major federal programs in edu-  
10 cation. The kinds of education needed and offered are  
11 constantly changing and expanding. A board which is to  
12 cope adequately with this vast area of responsibilities  
13 must consist of members who are qualified and who have  
14 sufficient time to become knowledgeable about the  
15 particular problems and issues of public education. A  
16 board is no more capable than is a superintendent of  
17 being competent to administer two fundamentally different  
18 areas of education.

19        The need for a separate board for public education  
20 promises to become even greater in the future. The  
21 present trends indicate the assumption of much greater  
22 role in educational financing by state and federal  
23 governments, possibly as much as 90 percent or more of  
24 total public school costs. Other trends also suggest an  
25 increasing centralization in education. This means an  
26 even greater degree of potential control of education at  
27 the state level. A well-informed and representative board  
28 would provide a much-needed balance to decisions on  
29 administrative policies.

30        A large majority of witnesses who testified on the

1 subject, including key state officials and many educators,  
2 spoke in favor of the two-board concept. They agreed that  
3 both from the standpoint of public education and from that  
4 of higher education, the separation of functions is  
5 eminently sensible. A former chairman of the state board  
6 of education, a long-time distinguished member of the board,  
7 articulated the position of many:

8 Please give every consideration to a two-board  
9 system. Frankly, even the most capable, dedi-  
10 cated board member finds it impossible to do  
justice to the total assignment. (Letter from  
Mr. M. E. Richard, February 15, 1972)

11 Numerous studies of the Montana educational system  
12 have recommended the creation of two boards. A legisla-  
13 tive council report in 1960 resulted in the proposal for  
14 a constitutional amendment to create two boards. The  
15 amendment was passed by the legislature but kept off the  
16 ballot for other reasons. The Legislative Council's  
17 recommendation, which was based on previous studies, offered  
18 the following major justification for a two-board system:

19 Increased demands on our educational facilities  
20 due to a growing population and inflationary  
21 pressures require that the responsibility for the  
22 administration of our educational system be divided  
23 into two boards, a Board of Education whose responsi-  
24 bility would be primary and secondary education,  
25 and a Board of Regents whose responsibility would  
26 be higher education. There is a limit to the  
amount of time a lay board member can devote to  
these responsibilities. The overwhelming responsi-  
bility placed on board members has prevented them  
from devoting adequate time to the consideration  
of policy questions. (Montana Legislative Council,  
Higher Education, Report Number 5, Helena, 1960,  
p.1)

27 The fear has been expressed that a separate board  
28 for public education might usurp the powers of local boards.  
29 There is no reason to be concerned about such a possibility,  
30 however, since the powers granted the state board would be

1 almost identical to those now granted. Indeed, the  
2 committee has actually deleted the word "control" from  
3 the powers now granted the board so that the new section  
4 reads, "exercise general supervision over the public  
5 school system." It would be difficult to argue that this  
6 grants any additional powers to the state board at the  
7 expense of local school boards.

8 Under existing law, vocational-technical centers  
9 will remain within the public school system and thus under  
10 the jurisdiction of the board of public education. Wit-  
11 nesses from the "vo-tech" field assured the committee that  
12 this was their preference at the present time. However,  
13 the language of this section and of the new Section 11  
14 allows sufficient flexibility so that, should conditions  
15 change, these institutions could be accommodated in the  
16 system of higher education.

17 The voting members of the board would consist of  
18 seven members selected by the governor for six-year over-  
19 lapping terms. The governor and superintendent retain  
20 ex officio membership on the board but in a nonvoting  
21 capacity. The committee feels that the elective officials  
22 should be separate from board decision-making, but should  
23 retain membership on the board for informational and  
24 coordinating purposes.

25 The committee feels that the duties of the superin-  
26 tendent should be legislatively prescribed, to allow for  
27 changing conditions and possible alterations of the  
28 relationship between the board and the superintendent.  
29 It is fully expected by the committee that the office of  
30 the superintendent of public instruction will be provided

1 for in the executive article. A majority of the committee  
2 feels strongly that the superintendent should be elected,  
3 and the committee has structured the educational article  
4 with this notion in mind. An elected superintendent pro-  
5 vides a necessary direct link to the people which is  
6 important to the educational system.

7 *Section 11. BOARD OF REGENTS OF HIGHER EDUCATION.*

8 *There shall be a board of regents of higher education, a*  
9 *body corporate, which shall govern and control the academic,*  
10 *financial, and administrative affairs of the Montana univer-*  
11 *sity system, and shall supervise and coordinate other*  
12 *public educational institutions which may be assigned by*  
13 *law. Said board shall consist of seven members appointed*  
14 *by the governor to six year overlapping terms, subject to*  
15 *confirmation by the senate, under regulations provided by*  
16 *law. The board shall appoint its executive officer and*  
17 *prescribe his term and duties. The governor and superin-*  
18 *tendent of public instruction shall be ex officio non-voting*  
19 *members of this board.*

20 COMMENTS

21 The second fundamental component of the proposed  
22 new state administrative structure for education is a  
23 board of regents of higher education. The same reasons  
24 which apply to the need for specialization and concen-  
25 tration on the public school board hold also for the board of  
26 regents. Higher education is fundamentally different from  
27 public school education--in goals, curriculum, financing,  
28 control, and operation--and it must be administered accord-  
29 ingly. There is very little in common between the public  
30 school system and higher education, other than a shared

1 need to provide a smooth transition for students between  
2 the two systems.

3 A recognition of the particular needs and problems of  
4 higher education has led all but two states to establish  
5 separate state governing boards for higher education.  
6 Montana and Idaho remain the only two states which retain  
7 a single board for both public schools and the university  
8 system. Some states have more than two boards for their  
9 educational systems, and the generally recognized principle  
10 is that different educational tasks require different  
11 administrative structures.

12 As noted in the comments to the previous section,  
13 major studies of education in Montana have recommended the  
14 creation of two separate boards. The Durham Report on  
15 higher education (G. Homer Durham, The Administration of  
16 Higher Education in Montana, Helena, Montana, Legislative  
17 Council, 1958), for instance, described the difficulties  
18 of a state board which was unable to deal satisfactorily  
19 with both areas of education. As a result of the recommenda-  
20 tions of the Durham Report, the legislature passed a law  
21 which divided the board into two parts, one of which sits  
22 as the state board of education, and one of which sits as  
23 the ex officio board of regents. This name-shuffling, how-  
24 ever, has done little to alleviate the difficulty inherent  
25 in a dualistic board.

26 In addition to administrative questions, another funda-  
27 mental reason exists for the establishment of a separate  
28 board of regents of higher education. Higher education is  
29 not simply another state service; the administrative  
30 structure of higher education cannot be considered an



1 ordinary state agency. The unique character of the  
2 college and university stands apart from the business-as-  
3 usual of the state. Higher learning and research is a  
4 sensitive area which requires a particular kind of protection  
5 not matched in other administrative functions of the state.

6 Few would dispute the vital importance of academic  
7 freedom to the process of higher learning. Such freedom  
8 is the essence of the American higher educational system.  
9 Only in an atmosphere of independent and unfettered inquiry  
10 can an objective pursuit of knowledge be conducted which  
11 is unhindered by prejudice and vested interest. The great  
12 contributions to both scientific and humanistic learning  
13 which have emerged from American colleges and universities  
14 can be attributed in large part to the freedom traditionally  
15 enjoyed by the teachers and students in such institutions.

16 This was the idea implicit in the founding of both  
17 private and public colleges and universities in the  
18 United States, and it is an idea which still prevails.  
19 The society as a whole accepts the principle unreservedly;  
20 rarely does a direct attack come upon the concept of free  
21 inquiry. However, a more subtle kind of coercion has made  
22 its appearance, and it is of the sort which is likely to  
23 become an even greater threat to the integrity of higher  
24 education in the future. This is the growing power of  
25 the centralized, bureaucratic state. Without overtly  
26 intending to curtail freedoms, the modern state has absorbed  
27 an increasing amount of power and control in the name of  
28 efficiency. A pervasive form of influence and manipula-  
29 tion has grown hand in hand with the emerging predominance  
30 of the government form and the computer.

1       A warning of this social trend was voiced in a land-  
2 mark study of the condition of the American university  
3 conducted in the late 1950's under the chairmanship of  
4 Dr. Milton Eisenhower under a Ford Foundation grant. The  
5 study described a variety of creeping controls on univer-  
6 sity systems which have appeared in recent years across  
7 the country. It warns that, "strict" adherence by institu-  
8 tions of higher learning to a bewildering array of centralized  
9 bureaucratic controls will ultimately endanger the academic  
10 as well as the administrative freedom of the college"  
11 (Malcolm Moos and Francis E. Rourke, The Campus and the  
12 State, Baltimore: The John Hopkins Press, 1959, p.6.)  
13 Among the sources of growing controls which increasingly  
14 impinge on universities are state budget offices,  
15 state auditors, comptrollers, purchasing departments, per-  
16 sonnel offices, central building agencies, and a variety of  
17 older forms of control, such as legislative riders, which  
18 are being used in new ways to affect colleges and universities.  
19 The informal controls associated with these direct means  
20 often exert an even stronger influence on the educational  
21 process.

22       The study concludes that the maintainance of the  
23 system of higher education free from unnecessary bureaucratic  
24 and political interference is important not only to a  
25 healthy academic atmosphere but also to the administrative  
26 efficiency of the system of higher education:

27       Creative research, by its very nature, requires  
28 freedom to move in a different direction if the  
29 facts uncovered require it. The farther away  
30 budget authority lies and the more time-con-  
suming it is to get permission for such changes,  
the less will be accomplished. Research and in-  
struction at the higher levels, are not services



1 for which specifications can be written in advance,  
2 and for which one seeks the lowest bidder. They  
3 are venture capital investments where one success-  
4 ful strike in a multitude, either in the form of  
5 a new ideal, or a trained individual capable of  
6 producing them, may spell the difference between  
7 a forward-moving or a retrograding nation. (p.316)

8 The power to coordinate and operate the system of  
9 higher education is one which belongs properly to an in-  
10 formed board of regents who have the knowledge and ability  
11 to determine rationally the course of higher education.  
12 Master plans have been suggested for the guidance of  
13 higher education in Montana but have failed to be applied  
14 because of a lack of power on the part of the board for  
15 their implementation. A board of regents empowered to  
16 carry out its informed judgements would be an important  
17 force for efficiency in the higher educational system.

18 It is this factor of efficiency which is highlighted  
19 in the study chaired by Dr. Eisenhower. The primary  
20 conclusion of the study is that freedom actually enhances  
21 efficient operation of a university system:

22 [T]he fact that higher education very largely  
23 owes its autonomous position in state govern-  
24 ment to the belief that freedom promotes rather  
25 than limits efficiency.

26 . . . . .  
27 In the future there is one point that colleges  
28 and universities will need to make to the public  
29 and its elected representatives very persuasively.  
30 This is simply that the goal of efficiency in  
higher education can be realized without noneduca-  
tional officials intervening in the fiscal affairs  
of colleges and universities. (pp. 313, 318)  
Two factors in particular add to the efficiency of  
a university system which is relatively free to control  
its own affairs: long-range planning and administrative  
decentralization. There is a clear need for a strong  
board of regents to make long-range plans which are  
appropriate to the needs of higher education and free

1 from short-term political whims. The limits of centralization in government operations have become apparent;  
2 particularly in such an unpredictable and flexible field  
3 as higher education, local and regional decision-making  
4 has demonstrated a greater efficiency than have ultra-  
5 centralized management techniques.  
6

7 A board of regents which is given the power to  
8 control and manage its own affairs would enormously  
9 improve the planning situation for higher education in  
10 Montana. At present duplication and inter-institutional  
11 rivalry for funds is the rule. Under the proposed system  
12 the board of regents would submit a unified budget to the  
13 legislature for action. Competition for funds which now  
14 occurs in the legislative halls would be resolved in advance  
15 by the board, which would have in mind a broad view of higher  
16 education. Similarly, the board would be in a position  
17 with knowledge and authority to eliminate wasteful duplication of courses and other endeavors which now drain  
18 university funds. Academic and administrative time which  
19 is now wasted in a multi-level budgeting process would be  
20 spared. Hard decisions concerning direction and operation  
21 of the entire university system could be made intelligently  
22 and objectively by such a board.  
23

24 With these considerations in mind, the committee has  
25 developed the proposal for a board of regents of higher  
26 education embodied in Section 11. The proposed board  
27 would fulfill the requirements for specialization, freedom,  
28 and efficiency described above. The board would have  
29 corporate status and would be charged with the function  
30 of controlling the academic, financial, and administrative

1 affairs of the Montana university system. These are the  
2 characteristics and powers which such a board must  
3 necessarily have in order to be effective in carrying out  
4 the purposes for which it is designed.

5 In designating the board of regents a body corporate,  
6 the committee intends that the board be considered a legal  
7 entity which has powers as a board rather than as individ-  
8 uals and which is perpetuated as a separate administrative  
9 entity. With such status, the board gains a legal status  
10 appropriate to its task. One study notes:

11 Many would interpret the granting of corporate  
12 status to a university as the highest achieve-  
13 ment and fullest recognition of the independence  
14 of higher education. It is an acknowledgment  
15 of the freedom for objective inquiry necessary  
16 for an institution of higher education. [Hawaii,  
17 Legislative Reference Bureau, Hawaii Constitutional  
18 Convention Studies, Article IX: Education (Higher  
19 Education), Vol. 2, Honolulu: 1968, p.8.]

17 As a constitutional corporation, the board of regents  
18 would be presumed to exercise managerial control over its  
19 own internal affairs. Extensive studies which have been  
20 done on the constitutional status of boards of higher edu-  
21 cation indicate that the particular determination of powers  
22 and responsibilities of a board for a given state depend  
23 to a large degree on the particular history and academic  
24 structure in that state. (See especially Charles R.  
25 Cashmore, Barry L. Hjort, and Ronald R. Loddors, Constitu-  
26 tional Authority for Higher Education: A Legal Analysis,  
27 Report submitted to the Education and Public Lands Committee,  
28 Montana Constitutional Convention, 1971).

29 It is interesting to note that the Montana Constitu-  
30 tion of 1884 named the board "The Regents of the University

1 of Montana" and designated it a "body corporate" [Art. IX,  
2 Sec. 12]. This language was changed when the concept of  
3 the state board was broadened in 1889 to include juris-  
4 diction over other state educational institutions, [Art. XI,  
5 Sec. 8, Constitution of 1889].

6 Under the existing Section 11, the Montana Supreme  
7 Court has declared that, "the board of education is a  
8 part of the executive department, and is but an agency of  
9 the state government" (State v. Brannon, 86 Mont. 200, 208  
10 [1929]). In the same opinion, the court referred to the  
11 university as the "development arm" of the state. It is the  
12 committee's view that this is not an adequate description  
13 of a state board of regents nor of the character or  
14 function of a university. The proposed section would es-  
15 tablish the board and the university system in roles appropriate  
16 to a modern, free system of higher education.

17 The board of regents is also granted supervising and  
18 coordinating powers over other institutions of higher edu-  
19 cation as may be assigned by law. This distinction between  
20 board powers with respect to the university system and other  
21 institutions of higher education is of particular importance  
22 to community colleges, which are presently controlled by  
23 local boards. The language leaves flexibility to the  
24 legislature to respond to future developments in higher  
25 education. The membership and terms of the board are  
26 identical to those of the board of public education; however,  
27 in contrast to the lower board, the board of regents is  
28 authorized to appoint its own executive officer.

29 *Section 12. STATE UNIVERSITY FUNDS. The funds of the*  
30 *state university and of all other state institutions of*

learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall be guaranteed by the state against loss or diversion. The interest of said invested funds, together with the rents from leased lands or properties shall be devoted to the maintenance and perpetuation of these respective institutions.

## COMMENTS

This section remains unchanged from Section 12 of the existing constitution. This provision has worked well in protecting the funds of the university system, and it is in accord with the conditions mandated in the Enabling Act for lands granted the university.

MINORITY PROPOSAL


BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

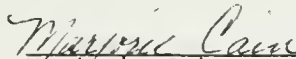
That the following section replace Section 3 of the  
Education and Public Lands Majority Proposal:

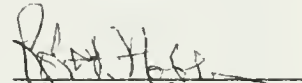
ARTICLE

EDUCATION

Section 3. The public school fund shall forever remain  
inviolate. The public school fund and the funds of the  
state university and of all other state institutions of learning,  
from whatever source accruing, shall be safely and conserv-  
atively invested in public securities with the state, or in  
bonds of the United States, or in other securities fully  
guaranteed as to principal and interest by the United States,  
or in other such safe investments bearing a fixed rate of  
interest, as may be prescribed by law.

  
Lloyd Barnard

  
Marjorie Cain

  
Robert Noble



COMMENTS ON MINORITY PROPOSAL

ARTICLE \_\_\_\_\_

EDUCATION

Section 3. The public school fund shall forever remain inviolate. The public school fund and the funds of the state university and of all other state institutions of learning, from whatever source accruing, shall be safely and conservatively invested in public securities with the state, or in bonds of the United States, or in other securities fully guaranteed as to principal and interest by the United States, or in other such safe investments bearing a fixed rate of interest, as may be prescribed by law.

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to come into possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education.

The minority, therefore, proposes that specific restrictions to guarantee the secure investment of school funds be included under Section 3 of the proposed new article. This intention also requires a modification of the proposed article on investments. The addition of the phrase "not otherwise constitutionally restricted" allows the requirements specified

1 in the minority's proposed Section 3 of the new Education  
2 article to be fulfilled.

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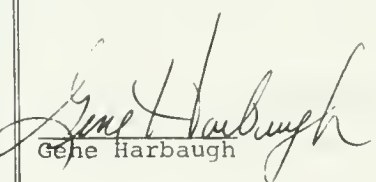
MINORITY PROPOSAL

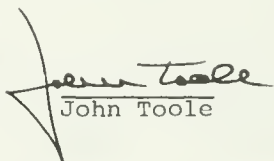
BE IT PROPOSED:


That the following be substituted for Section 6 of the Majority Proposal of the Education and Public Lands Committee.

*Section 6. AID PROHIBITED TO SECTARIAN SCHOOLS.*

*Neither the legislative assembly, nor any county, city, town, or school district, or other public corporations, shall ever make directly any appropriation, or pay from any public fund or monies whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect or denomination whatever. This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.*

  
Gene Harbaugh

  
John Toole

  
Dan Harrington



1 state enrolled in nonpublic schools. A total of 2,775  
2 students, or 10% of the total higher education students of  
3 the state, are enrolled in nonpublic institutions of  
4 higher learning.

5 It is common knowledge that many nonpublic institutions  
6 are facing extreme difficulties in financing their institu-  
7 tions. Nationally, in 1950 over 50 percent of university  
8 and college students were enrolled in nonpublic institutions.  
9 In 1969 this figure had dropped to 28 percent. Many non-  
10 public elementary and secondary school are also being forced  
11 to close.

12 Due to school closures, since 1964-65 the number of  
13 students enrolled in nonpublic elementary and secondary  
14 schools in Montana has dropped from 19,878 to 10,579, a  
15 cut in enrollment of almost half. In the same period 22  
16 of the previous total of 64 nonpublic schools were forced  
17 to close their doors. (See Appendix G).

18 In an age when the state exercises vast economic powers  
19 and when inflationary pressures are rising, the hopes for  
20 the survival of any nonpublic educational institutions  
21 become increasingly dim.

22 The result is not only a denial of educational oppor-  
23 tunity and diversity, but also a significantly greater drain  
24 on public revenue than would be the case if the schools were  
25 allowed to survive through the types of aids permitted under  
26 the federal First Amendment. An example of the increased  
27 costs to taxpayers resulting from the closing of nonpublic  
28 schools is that of the recent closing of parochial schools  
29 (334 high school students; 160 junior high students; 336  
30 elementary students) in Helena. The additional costs which

1 resulted in Helena from the displacement of students from  
2 nonpublic to public schools without any increase in tax  
3 base has been estimated to be approximately \$1,767,600 over  
4 the past three-year period (based on bond issue, permissive  
5 levy, voted amount, and deficiency). This does not include  
6 the additional cost to the state foundation program for the  
7 support of the additional students. In the state as a whole  
8 the estimated savings to state taxpayers resulting from  
9 students educated in nonpublic elementary and secondary  
10 schools is approximately \$6,000,000 per year. A table  
11 showing the state-wide savings to taxpayers is included in  
12 Appendix H.

13 In a time when the nation's courts are insisting on  
14 education as a fundamental and basic right, and that equality  
15 of educational opportunity be measured by a corresponding  
16 equality of financial expenditure, it is incongruous to retain  
17 a constitutional statement that might deprive a significant  
18 segment of our students of any aid available which might  
19 help to equalize their educational opportunity.

20 Education is by its very nature a public purpose. This  
21 is the reason why the state involves itself so fully in  
22 accrediting and setting standards for both public and non-  
23 public schools. The ability of a student to receive a  
24 secular education should not be hampered by his religious  
25 or other beliefs. Incidental aid which might accrue to  
26 religiously connected institutions should not preclude the  
27 major benefit to the child of the receipt of an education,  
28 any more than religiously affiliated hospitals should be  
29 denied public assistance because of possible indirect aid to  
30 a church.



1       Section 8 of the existing constitution is among the  
2 most restrictive, if not the most restrictive, such con-  
3 stitutional provision in the nation. In addition to a  
4 complete ban listing all possible sources of public aid to  
5 sectarian schools or for sectarian purposes (which is  
6 identical to the most stringently worded provisions in  
7 several other states), the Montana provision adds the words  
8 "directly or indirectly." This precludes even the kind of  
9 student benefit aid which has been accepted by the federal  
10 Supreme Court.

11       It is the belief of the minority that the language  
12 contained in Section 8 of the present constitution is  
13 unnecessarily stringent and poses a serious threat to the  
14 educational rights of students attending nonpublic educa-  
15 tional institutions. The financing of education in America  
16 in the future is in a state of flux, but there is every  
17 indication that the federal government will become increas-  
18 ingly involved. A recent study by the National Educational  
19 Finance Project concludes:

20       Whatever federal grants are made in the days ahead,  
21 they should not by-pass state governments; instead,  
22 federal grants for public schools should be made to  
23 the state educational agency for allocation to local  
24 schools in accordance with state plans. (National  
25 Educational Finance Project, Future Directions for  
26 School Financing, Gainesville, Florida: 1971, p. 35.)

27       Should revenue sharing, block grants, and other forms  
28 of federal financing, yet to be devised, fall within the  
29 jurisdiction of state control, nonpublic educational  
30 institutions might be seriously affected if such funds

1 had to be restricted in accordance with the regulations  
2 of the present Section 8.

3 In reply to those who are fearful of changing the  
4 present system lest state aid to parochial institutions  
5 violate the principle of separation of church and state,  
6 the minority wishes to point out that the First Amendment  
7 of the federal Constitution guarantees the enforcement of  
8 that principle. The First Amendment has a back-log of  
9 almost 200 years of legal interpretation. That inter-  
10 pretation has evolved through the years to a rather clear  
11 definition of the types of aid which are permissible and  
12 those which are not. The primary concerns expressed by  
13 the Court in its most recent cases on the subject are on  
14 the principles of non-entanglement and state neutrality.  
15 In Lemon v. Kurtzman (403 U.S. 602) the Chief Justice  
16 Burger gave the opinion of the Court which stated:

17 Our prior holdings do not call for total  
18 separation between church and state; total  
19 separation is not possible in an absolute  
20 sense . . . . Judicial caveats against entangle-  
21 ment must recognize that the line of separation,  
22 far from being a "wall," is a blurred, indistinct  
23 and variable barrier depending on all the cir-  
24 cumstances of a particular relationship . . . .

25 In order to determine whether the govern-  
26 ment entanglement with religion is excessive,  
27 we must examine the character and purposes of the  
28 institutions which are benefited, the nature of the  
29 aid that the State provides, and the resulting  
30 relationship between the government and the religious

1 authority. (Id. at 756-757)

2 In this case the Court ruled that state subsidized  
3 salaries for teachers of secular subjects in parochial  
4 schools violated this principle of non-entanglement and  
5 therefore was not acceptable as a form of aid.

6 The minority proposal is in accord with the principles  
7 set forth in the First Amendment. What is at stake in the  
8 minority proposal is not separation of church and state,  
9 which is an issue of basic rights already delineated by  
10 the federal Constitution and federal courts, but rather  
11 the issue of encouraging equality of educational oppor-  
12 tunity.

13 Finally, the minority wishes to take the position  
14 that the language of the existing Section 8 is rigid and  
15 inflexible, and is not in keeping with changing legal  
16 interpretations nor fluxuating social patterns. In order  
17 to protect our heritage of pluralism and foster the  
18 principle of equal educational opportunity, the minority  
19 report urges adoption of its proposal.

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MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

2 That there be a new Article on Public Lands to read  
3 as follows:


4  
5 ARTICLE \_\_\_\_\_


6 PUBLIC LANDS

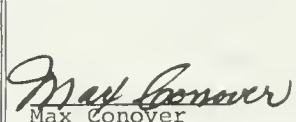
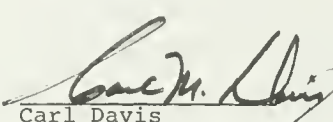
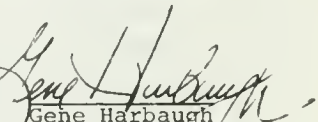
7 Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands  
8 of the state that have been or that may hereafter be granted  
9 to the state by congress, and all lands acquired by gift or  
10 grant or devise, from any person or corporation, shall be  
11 public lands of the state, and shall be held in trust for  
12 the people, to be disposed of as hereafter provided, for  
13 the respective purposes for which they have been or may be  
14 granted, donated or devised; and none of such land, nor any  
15 estate or interest therein, shall ever be disposed of except  
16 in pursuance of general laws providing for such disposition,  
17 nor unless the full market value of the estate or interest  
18 disposed of, to be ascertained in such manner as may be  
19 provided by law, be paid or safely secured to the state;  
20 nor shall any lands which the state holds by grant from the  
21 United States (in any case in which the manner of disposal  
22 and minimum price are so prescribed) be disposed, of except  
23 in the manner and for at least the price prescribed in the  
24 grant thereof, without the consent of the United States.  
25 Said lands shall be classified by the board of land  
26 commissioners in a manner prescribed by law. Any of said  
27 lands may be exchanged for other lands, public or private,  
28 which are equal in value and as closely as possible equal  
29 in area.  
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Richard Champoux, Chairman

  
Robert Noble, Vice Chairman

    
Lloyd Barnard William Burkhardt Marjorie Cain

    
Max Conover Carl Davis Gene Harbaugh

  \_\_\_\_\_  
Dan Harrington Robert Woodmansey John Toole

1 COMMENTS ON MAJORITY PROPOSAL

2 Section 1. PUBLIC LAND TRUST, DISPOSITION. All lands  
3 of the state that have been or that may hereafter be granted  
4 to the state by congress, and all lands acquired by gift or  
5 grant or devise, from any person or corporation, shall be  
6 public lands of the state, and shall be held in trust for  
7 the people, to be disposed of as hereafter provided, for  
8 the respective purposes for which they have been or may be  
9 granted, donated or devised; and none of such land, nor any  
10 estate or interest therein, shall ever be disposed of except  
11 in pursuance of general laws providing for such disposition,  
12 nor unless the full market value of the estate or interest  
13 disposed of, to be ascertained in such manner as may be  
14 provided by law, be paid or safely secured to the state;  
15 nor shall any lands which the state holds by grant from the  
16 United States (in any case in which the manner of disposal  
17 and minimum price are so prescribed) be disposed, of except  
18 in the manner and for at least the price prescribed in the  
19 grant thereof, without the consent of the United States.  
20 Said lands shall be classified by the board of land  
21 commissioners in a manner prescribed by law. Any of said  
22 lands may be exchanged for other lands, public or private,  
23 which are equal in value and as closely as possible equal  
24 in area.

25 COMMENTS

26 In testimony on the issue of public lands, officials  
27 of the State Land Board described public lands as  
28 trust lands held by the state and stated that the income  
29 derived from these lands is credited to the state school  
30 fund or other respective purpose for which said land was



1 granted. Sportsmen maintained that there is a lack of public  
2 access to public lands. The committee also heard from  
3 several witnesses on existing and proposed management practices  
4 on public lands.

5 The committee took into account the mandate of the En-  
6 abling Act of 1889 in drafting its proposal. It is the  
7 general view of the committee that the primary constitutional  
8 issue with regard to state lands is the designation of state  
9 responsibility for public lands as held in trust by the state  
10 to be disposed of as provided in the terms of the grant.

11 Admittedly, some dispute as to the mandate of the Enabling  
12 Act has and will, in all probability, be raised. The  
13 "general public benefit" notion articulated in Thompson v.  
14 Babcock (147 Mont. 46) requires continual interpretation and  
15 specification. The question of just what is the "largest  
16 measure of legitimate and reasonable advantage to the state"  
17 remains open to further determination. The committee em-  
18 phasizes the singular mandate in the Enabling Act that the  
19 lands granted in Section 10 were "for the support of common  
20 schools." The proposal embodies a fundamental protection  
21 of these lands entrusted to the state so that their dis-  
22 position will be in accordance with the greatest public  
23 benefit, commensurate with the purposes for which the lands  
24 were granted.

25 This proposal expresses the committee's view of the  
26 best constitutional method of serving public interest,  
27 granting powers, and providing for needed flexibility. Con-  
28 vinced of the need for sound and efficient management of  
29 state school lands, the committee delegated this responsi-  
30 bility in another section of the constitution to the board

1 of land commissioners. The merits for such action are  
2 (1) success of present system and (2) need for flexibility.  
3 The economic success of the present system of land manage-  
4 ment is borne out by the fact that the state had as of  
5 June 30, 1970, \$52,907,243 dollars in its permanent school  
6 fund, with almost \$3,000,000 dollars coming in on deferred  
7 payments every year. Montana remains one of two or three  
8 states in the nation which has been wise enough to retain  
9 almost the entirety of its federally granted school lands  
10 and which, as a result, now reaps a substantial income from  
11 such lands for schools.

12 The committee decided to delete the constitutional  
13 specification of land classes. House Joint Resolution #32  
14 (Laws of Montana, 42nd Session, 1971, Vol. 11, p. 1709)  
15 expressed the sense of the legislature in the form of a  
16 recommendation to the Constitutional Convention that the  
17 Board of Land Commissioners be given the authority to grant  
18 multiple use classifications and the power to change these  
19 classifications as the Board deemed necessary. The committee  
20 agrees with the intent of this resolution to provide flexi-  
21 bility in management of public lands. No arguments were  
22 presented to the committee in opposition to such a change.  
23 The committee can foresee only benefits in the elimination  
24 of rigid constitutional classifications.

25 The other area of change in the article was the inclu-  
26 sion of the sentence, "Any of said lands may be exchanged for  
27 other lands, public or private, which are equal in value and  
28 as closely as possible equal in area." Due to the fact that  
29 the Enabling Act was amended in 1932 to provide for such an  
30 exchange of lands, the committee proposes a constitution

1 that contains a provision consistent to the amended Enabling  
2 Act. Several witnesses pointed out the advantages which  
3 would accrue to the state from the ability to make judicious  
4 exchanges to consolidate state holdings.

5 The committee also eliminated Sections 2 and 3 of the  
6 existing constitution, Article XVII, on the grounds that  
7 they have been made obsolete by the proposed new language.

8 In summary, the committee has retained almost the  
9 entire first section of the Public Lands Article (Article XVII)  
10 of the present constitution, with the inclusion of "exchange"  
11 of state lands to add an important managerial power. The  
12 committee chose to eliminate constitutional classifications  
13 for state lands due to the need for flexibility. Sections 2  
14 and 3 were eliminated because they are obsolete or are  
15 matters of purely legislative concern.

MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

2 That there be a new Article on Investments to read  
3 as follows:

4  
5 ARTICLE \_\_\_\_\_

6 INVESTMENTS


7 Section 1. UNIFIED INVESTMENT PROGRAM. The legis-  
8 lative assembly shall provide for a unified investment  
9 program for all public funds. The state may invest surplus  
10 funds of any political subdivision of the state when re-  
11 quested to do so by the governing board of that political  
12 subdivision. The legislative assembly shall designate a  
13 state officer or agency to accept or reject contributions  
14 to the state. The state shall keep a permanent record of  
15 all contributions to the state, and shall periodically  
16 make provision for commemoration of those benefactors.  
17 The legislative assembly shall establish regulations and  
18 limitations for the investment of public funds. An  
19 audit of the state investment program shall be conducted  
20 annually.

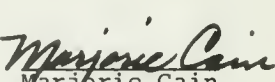
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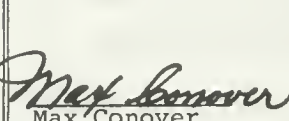
  
Richard Champoux, Chairman

  
Robert Noble, Vice Chairman

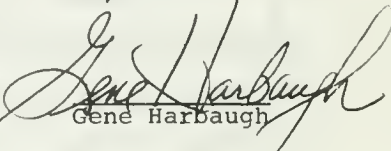
  
Lloyd Barnard

  
William Burkhardt

  
Marjorie Cain

  
Max Conover

  
Carl Davis

  
Gene Harbaugh

  
Dan Harrington

  
Robert Woodmansey

John Toole

1 COMMENTS ON MAJORITY PROPOSAL

2 Section 1. UNIFIED INVESTMENT PROGRAM. The  
3 legislative assembly shall provide for a unified  
4 investment program for all public funds. The state  
5 may invest surplus funds of any political subdivision  
6 of the state when requested to do so by the governing  
7 board of that political subdivision. The legislative  
8 assembly shall designate a state officer or agency to  
9 accept or reject contributions to the state. The state  
10 shall keep a permanent record of all contributions to  
11 the state, and shall periodically make provision for  
12 commemoration of those benefactors. The legislative  
13 assembly shall establish regulations and limitations  
14 for the investment of public funds. An audit of the  
15 state investment program shall be conducted annually.

16 COMMENTS

17 The relevant article of the existing constitution  
18 (Article XXI) was jointly assigned to the Revenue and  
19 Finance Committee and the Education and Public Lands  
20 Committee. After due consideration of the provision in  
21 conjunction with the Revenue and Finance Committee, a  
22 majority of the Education and Public Lands Committee has  
23 decided to adopt replacement language similar to that  
24 proposed by the former committee.

25 The Education and Public Lands Committee is concerned  
26 with the security and protection of the public funds of the  
27 state, but recognizes the obsolete character of most of the  
28 existing article on the Trust and Legacy Fund. Due to the  
29 confused history of the fund and the statutory nature of  
30 most aspects of its investment, the committee feels that



1 only a broad statement of investment policy is necessary.  
2 A unified state investment program is the most rational  
3 way to administer such funds, and it is a method which  
4 promises to increase the income from such monies over what  
5 has been realized in the past.

6 This proposed section differs from the majority  
7 proposal of the Revenue and Finance Committee in two major  
8 respects. First, the committee feels that it is important  
9 to allow investment of the funds of localities only at  
10 their own request. Secondly, due to the particular char-  
11 acter of gifts and grants made to the educational system,  
12 the committee agrees that it is important to maintain  
13 records of such gifts and to commemorate the benefactors.  
14 Otherwise the majority of the Education and Public Lands  
15 Committee is in agreement with the proposed language and  
16 rationale of the majority of the Revenue and Finance  
17 Committee on this provision.

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MINORITY PROPOSAL

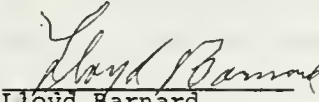
BE IT PROPOSED BY THE EDUCATION AND PUBLIC LANDS COMMITTEE:

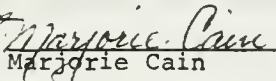
That the following sentence replace the first sentence  
of the Education and Public Lands Majority Proposal:

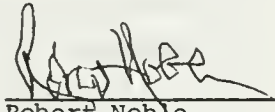
ARTICLE \_\_\_\_

INVESTMENTS

The legislative assembly shall provide for a unified  
investment program for all public funds not otherwise  
constitutionally restricted.

  
Lloyd Barnard

  
Marjorie Cain

  
Robert Noble

COMMENTS ON MINORITY PROPOSAL

ARTICLE \_\_\_\_

INVESTMENTS

*The legislative assembly shall provide for a unified investment program for all public funds not otherwise constitutionally restricted.*

COMMENTS

A minority of the committee feels that, although unnecessary restrictions should be removed from the investment of state funds, nevertheless, security must be the predominant factor in the investment of school funds. To eliminate all restrictions except those adopted by statute would be to allow the school funds to come into possible jeopardy, in the case of, for instance, if the investment board were to emphasize the principle of growth over that of security. Due to the reliance of local districts upon an insured source of yearly funding, the minority feels that the greatest precautions must be taken in securing those public funds which are devoted to the support of education. The addition of the phrase "not otherwise constitutionally restricted" in the proposed Investments article allows the requirements specified in the minority's proposed Section 3 of the new Education article to be fulfilled.

## APPENDIX A

### CROSS REFERENCES

#### Education Article Proposed Section

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

#### Present Article and Section

XI, 1, 6, 7  
XI, 2  
XI, 3  
XI, 4  
XI, 5  
XI, 8  
XI, 9  
XI, 10  
XI, 11  
XI, 11  
XI, 11  
XI, 12

#### Public Lands Article

1

XVII, 1, 2, 3

#### Investments Article

1

XXI, (entire article)

## APPENDIX B

### PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Education and Public Lands Committee during its deliberations:

	<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
1.	11	Virginia Blend	Full State Fund- ing	Intent included in part, Section 1
2.	29	Marian Erdmann	School Election	Intent incorporated Section 8
3.	41	John Leuthold	Public Aid	Intent incorporated in part, Sec. 6
4.	43	R. Champoux	Equal Educa- tional Opp.	Incorporated in Section 6
5.	46	Mike MeKeon	Public School Financing	Intent Incorporated
6.	49	C. Blaylock	Apportionment of School Funds	Incorporated in Section 8
7.	68	Carl Davis	Investment of School Funds	Incorporated in part in Sec. 1,3,5
8.	74	Max Conover	Investment of Public School Fund	Adopted with slight changes as Sec. 3
9.	85	G. Rollins	Body Corporate	Incorporated in part Section 11
10.	91	Marjorie Cain	Equal Educational Opportunity	Incorporated in part Section 1
11.	102	R. Kelleher	Financial Suppt. Private College	Rejected

12.	113	R. Roeder	Teachers' Salary Equity Board	Rejected
13.	128	M.N.Robinson	Appoint Board of Education	Rejected
14.	130	M.N.Robinson	Public Libraries	Incorporated in part in Section 1
15.	135	Carl Davis	Exchange of Public Lands	Adopted with slight changes as Public Lands Article
16.	142	John Toole	Two Boards	Incorporated in part in Section 11
17.	143	John Toole	Combine Sections 1 and 6	Intent incorporated in Section 1
18.	146	D. Bugbee	Board of Regents	Intent incorporated in part in Sec. 11
19.	164	G. Harbaugh	Section 8	Rejected in majority report. Adopted in minority report
20.	171	W. Burkhardt	Board of Regents body corporate	Intent adopted in Section 11
21.	175	G. Harbaugh	School Lands	Intent incorporated in part in Public Lands Article



## APPENDIX C

### WITNESSES HEARD BY COMMITTEE

#### Name - Affiliation - Residence - Subject

1. N. D. Ostrander - Seventh Day Adventist Churches - Helena - Public Aid to Non-Public Schools.
2. Dr. E. L. Lynn - citizen - Helena - Public Aid to Non-Public Schools.
3. Chadwick Smith - Montana School Boards Assoc. - Helena - Two Boards of Education
4. Don Scanlin - Educator - Billings - Educational Philosophy
5. C. R. Anderson - citizen - Dillon - Education in General
6. Bill Cainan - Masons of Montana - Helena - Public Aid to Non-Public Schools.
7. Gladys Vance - PTA - Great Falls - General Education
8. Lloyd Markell - Montana Education Assoc. - Helena - Article XI.
9. Harriet Meloy - Member of the State Board - Helena - Two Boards of Education.
10. Harry Axtmann - Supt. of Schools, Roosevelt County - Wolf Point - County Superintendents.
11. Clarice Beck - American Assoc. of University Women - Helena - Age Limit.
12. Robert Herrig - Supt. of Schools, Lincoln County - Libby - County Superintendents.
13. Margaret Brown - Supt. of Schools, Gallatin County - Bozeman - County Superintendents.
14. Ted Schwinden - State Land Commissioner - Helena - State Lands and public access.

15. Fred Johnson - citizen - Great Falls - Public Lands.
16. Dolores Colburg - State Supt. of Public Instruction - Helena - All aspects of Education.
17. Maurice Hickey - Montana Education Association - Helena - Public Lands.
18. Fletcher Newby - Environmental Council - Helena - Public Lands.
19. Steven Coldiron - State Low-Income Organization - Helena - Article XI, Sections 5 and 7.
20. Robert Pantzer - President, University of Montana - Missoula - Two Boards.
21. Kenneth Rohyans - Mont. Assoc. for Retarded Children & Adults - Helena - Age Limit.
22. Dr. William Furdell - College of Great Falls - Great Falls - Public Aid to Non-Public Schools.
23. John Sheehy - Montana Catholic Conference - Billings - Public Aid to Non-Public Schools.
24. Lyle Conner - Masons of Montana - Helena - Public Aid to Non-Public Schools.
25. John Eldredge - citizen - Helena - Public Aid to Non-Public Schools.
26. Jack Holt - citizen - Helena - Public Aid to Non-Public Schools.
27. John S. Piatt - Americans United - Great Falls - Public Aid to Non-Public Schools.
28. Ernest Neath - Masons of Montana - Helena - Public Aid to Non-Public Schools.
29. Leo Kottas - Masons of Montana - Helena - Public Aid to Non-Public Schools.
30. George Schotte - Carroll College - Helena - Public Aid to Non-Public Schools.
31. Rev. John Moes - Christian Reform Church - Conrad - Public Aid to Non-Public Schools.
32. Forrest Anderson - Governor - Helena - State Board of Education.
33. Robert Watt - Montana Student President's Assoc. - Helena - State Board.

34. Harry Gaghen - Faculty Senate, EMC - Billings - Two Boards.
35. Polly Prechal - Faculty Senate, EMC - Billings - State Board.
36. James Short, President, WMC - Dillon - Two Boards.
37. Carl McIntosh - President, MSU - Bozeman - Two Boards.
38. James Kenny - Montana School Boards Assoc. - Helena - State Board of Education - One Board.
39. Dr. Larry Blake - Flathead Valley Community College - Kalispell - # of Boards.
40. Vern Kailes - Miles City Community College - Miles City - # of Boards.
41. Jim Hoffman - Dawson County Community College - Glendive - Description of Board's powers.
42. Arthur Hart - Vocational Rehabilitation - Helena - Vocational-Rehab in Constitution.
43. Jack Gunderson - State Representative - Power - State Supt.
44. Leroy Corbin - Montana Federation of Teachers - Butte - State Superintendent.
45. Rosemary Boschert - citizen - Billings - State Superintendent.
46. Erv. Gysler - Delegate - Fort Benton - Vo Tech
47. Maurice Driscoll - Director, Vo-Tech - Butte - Vo-Tech.
48. William Korizek - Director, Vo-Tech - Helena - Vo-Tech.
49. Jim Carey - Director - Great Falls Vo-Tech Center - Vo-Tech.
50. Gene Downey - Director - Missoula Vo-Tech Center - Vo-Tech.
51. Ray Heley - Director - Billings Vo-Tech Center - Vo-Tech.
52. Gordon Simmons - Missoula County High School - Missoula - Local Control of Vo-Tech Centers.
53. John Giese - Missoula County High School - Missoula - Vo-Tech.
54. Einar Brosten - Montana Vocational Educators Assoc - Helena-Vo-Tech Centers.
55. Grace Hanson - County Supt., Flathead - Kalispell - County Superintendents.

56. Opal Eggert - Lobbyist for Co. Supt. - Helena - County Superintendents.
57. Dorothy Simons - Lewis & Clark Co. Supt. - Helena - County Superintendents.
58. Carolyn Frojen - Missoula Co. Supt. - Missoula - County Superintendents.
59. Earl Barlow - Office of Public Instruction - Helena - Indian Education.
60. Bert Corcoran - Rocky Boy Supt. - Box Elder - Equal Education for Indians.
61. Frances Satterthwaite - Inter-Tribal Policy Board lobbyist - Helena - Indian Education.
62. Frank Shone - School District #1 - Helena - Indian Education.
63. Dwight Billedeaux - Eastern Montana College - Billings - Indian Education.
64. Robert Jovick - Montana Student President's Assoc. - Bozeman - Students Concern in Education.
65. Frank Dudas - Associated Students - MSU - Bozeman - Students Conern in Education.
66. Wayne Gildroy - Montana Student President's Assoc. - Students Concern.
67. John Christensen - Associated Students - U of M - Missoula - Students Concern.
68. Stan Juneau - Indian Club, EMC - Billings - Indian Education.
69. Calvin Herrera - Indian Club, EMC - Billings - Indian Education.
70. Clara Lee McMakin - Indian Club, EMC - Billings - Indian Education.
71. Dale Kindness - Indian Club, EMC -Billings - Indian Education.
72. Rayola Adele Eder - EMC - Billings - Indian Education.
73. Frank LaMere - EMC - Billings - Indian Education.
74. Leroy Berven - U of M - Missoula - Students Concern.
75. John Murphy - Student - Missoula - Students Concern.
76. Tom Daily - Student - Missoula - Students Concern.
77. Patricia Denny - Student - Missoula - Students Concern.

78. Ulyssis Doss - Professor, U of M - Missoula - Equal Educational Opportunity.
79. Harold Gray - University of Montana - Missoula - Equal Educational Opportunity.
80. Jim Graham - citizen - Miles City - Equal Educational Opportunity.
81. John Mansfield - citizen - Great Falls - Equal Educational Opportunity.
82. James Shea - citizen - Great Falls - Equal Educational Opportunity.
83. Barnie Old Coyote - Montana State University - Bozeman - Equal Educational Opportunity.
84. D. D. Cooper - Montana Education Association - Helena - Equal Educational Opportunity.
85. James Howeth - Board of Investments - Helena - Trust and Legacy Fund.
86. Marjorie King - Member State Board - Winnett - State Board of Education.
87. Fred Mielke - Member State Board - Havre - State Board of Education.
88. John French - Member of State Board - Ronan - State Board of Education.
89. Raymond Hoakanson - Montana Assoc. of School Administrators - Livingston - Financing.
90. John Campbell - Montana School Boards Assoc. - Helena - Educational Financing.
91. Mike Billings - Office of Public Instruction - Helena - Financing.
92. Mike Meloy - Office of Public Instruction - Helena - Foundation Program - Financing.
93. John Ray - citizen - Hamilton - Financing.
94. James Cox - U of M, School of Education - Public Aid to Non-Public Schools.
95. Earle Thompson - State Library Commission - Missoula - Libraries.
96. Doris Davies - American Assoc. of University Women - Libraries.
97. Robert Gopher - citizen - Great Falls - Indian Education.

98. George Darrow - State Representative - Billings - Section 1.
99. Dr. Bill Fisher - U of M, School of Education - Public Aid to Non-Public Schools.
100. Ray Gulick - citizen - Joplin - Education in general.



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# PROPOSAL

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APPENDIX E

STATE OF MONTANA

OFFICE OF THE STATE SUPERINTENDENT

HELENA 59801



DOLORES COLBURG  
Superintendent of  
Public Instruction

February 10, 1972

To: Richard Champoux, Chairman, Education Committee

From: Mike Billings, Director, Financial Support for Schools *Mike Billings*

Subject: Request for a fiscal note concerning proposed new wording of Article XI, Section 5.

If the wording in Article XI, Section 5 is changed in such a way that the I & I money is distributed to the elementary and secondary schools of the state (in place of to the public schools according to the 6-20 age census), no cost increase will be realized in administering the distribution of the funds. In fact, a substantial cost reduction would be realized, provided that the legislature includes the I and I money in the state equalization aid account. This act would eliminate the current costly annual practice of distributing the I and I money in March. This practice presently causes the school districts to spend a cumulative total of about \$50,000 annually to collect the census, and causes the Office of the Superintendent of Public Instruction to expend about \$3,000-\$5,000 to process the census.

Thus, if the wording of Article XI, Section 5 is changed as indicated, an annual savings of approximately \$53,000-\$55,000 could very well be realized by the education establishment in Montana. Under no conditions would the proposed section lead to increased cost of administration at the state or local levels.

MGB:kh

FUNDS GRANTED TO MONTANA NONPUBLIC EDUCATIONAL  
INSTITUTIONS UNDER SELECTED FEDERAL PROGRAMS

1. ESEA Title 1: Programs for educationally deprived children.  
Federal Guidelines: Educationally deprived children in nonpublic schools may participate, although no funds can be paid directly to a nonpublic school.

Total amount paid to Montana public schools: \$3,317,276

" " " " " nonpublic " : 0

(However, 6% of participating children were nonpublic school children in FY 1970)

2. ESEA Title 2: Textbooks supplied on permanent loan basis.  
Federal Guidelines: Nonpublic schools eligible to order books from a list supplied by Superintendent of Public Instruction.

Total amount allotted to Montana public schools: \$155,462

" " " " " nonpublic " : 5,775 (5.5%)

3. ESEA Title 3: Supplementary educational centers and services, including counseling, remedial instruction, experimental educational programs, etc.  
Federal Guidelines: No funds can be granted directly to nonpublic schools, but nonpublic school children can participate in projects administered by public schools.

Total amount allotted to Montana public schools: \$532,198

No estimate provided of nonpublic children participating;  
no funds allotted to nonpublic schools.

4. ESEA Title 6: Special education training for teachers and students.  
Federal Guidelines: Nonpublic school teachers eligible for training funds and nonpublic school children eligible to participate in programs run by public schools.

Total amount allotted to Montana public schools: \$262,279.

No estimate made of nonpublic school children participating;  
no funds allotted to nonpublic schools.

5. NDEA Title 3: Federal aid to higher education, the arts, etc.  
Federal Guidelines: Nonpublic schools not allowed to participate in part of program administered by the Superintendent of Public Instruction, but nonpublic schools can make direct application to U.S. Office of Education.

Total amount allotted to Montana public schools: \$207,298.

None allotted to Montana nonpublic schools through the Superintendent's Office. Unknown amount granted directly to nonpublic schools.

6. MDTA Title 2: Manpower development and vocational training.  
Federal Guidelines: Act provides that training may be done in nonpublic schools if they offer comparable quality and competitive costs, if the training is not available in public institutions, or if there is a long waiting period for entrance to public schools.

Total amount allotted to Montana public schools: \$1,359,000  
" " " " " nonpublic " : 114,918 (9.5%)

7. HEFA Title 1: Building grants to institutions of higher education.  
Federal Guidelines: Funds may be granted for construction purposes to nonpublic institutions.

Total amount allotted to Montana public institutions: \$6,341,001  
" " " " " nonpublic " : 1,009,246  
(13.7%)

Total amount allotted to Montana public schools in all of the above programs: \$5,833,513

Total amount allotted to Montana nonpublic schools in all of the above programs: \$ 120,693

(2%)

(plus an undetermined number of nonpublic school children who participate in public school-sponsored programs.)

Total amount allotted to Montana public institutions of higher education in the above program: \$6,341,001

Total amount allotted to Montana nonpublic institutions of higher education under the above program: \$1,009,246

(13.7%)

(\$ in thousands)

CARROLL COLLEGE

	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Higher Education Facilities Act, Title I (Grants for construction to undergraduate institutes)		\$129,620	\$ 15,079		\$405,557		
Higher Education Facilities Act, Title III (Loans for construction to undergraduate institutes)			480,000		492,000		
Cuban Loans			8,865	\$ 5,200	1,750	\$ 500	\$ 500
Educational Opportunity Grants				34,680	59,300	91,760	108,814
National Defense Student Loan	\$ 76,006	73,800	122,085	169,303	163,315	165,339	145,595
College Work-Study Program			24,944	103,383	197,479	274,275	277,582
Higher Education Act, Title I (Community Service and Continuing Education)				75			500,000



( \$ in thousands )

	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
<u>COLLEGE OF GREAT FALLS</u>							
Higher Education Act, Title VI-A (Special Equipment)				\$ 1,224	\$ 3,464	\$ 3,731	
Higher Education Act, Title III (Developing Institutions)				54,908			
Educational Opportunity Grants				19,170	38,300	59,000	\$ 45,121
National Defense Student Loan	\$ 38,624	\$ 36,000	\$ 74,822	86,619	62,282	80,881	65,409
College Work-Study Program			11,908	56,079	48,851	74,772	115,267
Higher Education Act, Title I				16,938			
<u>ROCKY MOUNTAIN COLLEGE</u>							
Higher Education Facilities Act, Title I (Grants)				463,719			
Higher Education Facilities Act, Title III, (Loans)				593,000			
Higher Education Act, Title VI-A				1,945			
Educational Opportunity Grants				18,160	35,800	45,560	39,504

	<u>(\$ in thousands)</u>						
	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
<u>ROCKY MOUNTAIN</u> <u>COLLEGE (Cont.)</u>							
College Work- Study Program			\$ 5,540	\$ 14,585	\$ 26,786	\$ 63,683	\$ 52,534
Higher Education Act, Title I					13,863		1,367
National Defense Student Loan	\$ 40,000	\$ 45,250	63,900	76,794	56,770	51,137	43,326

APPENDIX G  
NON-PUBLIC SCHOOL ENROLLMENT  
BY GRADE

YEAR	TOTAL K-8	TOTAL 9-12	Spec. Ed.	State Total
1964-65	-----	-----	--	19,878
1967-68	12,776	4,108	43	16,884
1968-69	11,306	3,788	30	15,094
1969-70	8,616	3,340	--	11,956
1970-71	8,204	3,205	13	11,409
1971-72	7,439	3,140	--	10,579

Non-Catholic  
Private Schools

27  
1380  
80  
\$845,568

Montana Parochial Schools

Total Number of Schools 46  
Total Number of Students 10,265  
Total Number of Teachers 533  
\*Total Savings to Taxpayers \$ 6,216,132  
(Estimated Biennial Savings) \$13,000,000

	No. of Schools	No. of Parochial Students	Savings to tax- payers by paro- chial schools*
Billings	5	1567	\$ 908,360
Butte	3	1202	798,108
Great Falls	7	2057	1,364,081
Missoula	4	885	528,732
Anaconda	4	1160	729,013
Bozeman	2	136	85,162
Kalispell	1	192	96,192
Havre	1	373	186,873
Glasgow	1	196	88,200
Glendive	1	235	105,985
Lewistown	2	268	137,797
Livingston	1	165	82,500
Miles City	2	465	244,131
Deer Lodge	1	99	49,005
Malta	1	96	46,080
Shelby	1	100	52,400
Sidney	1	98	53,116
Wolf Point	1	132	62,964
Hardin	1	126	71,316
Pryor	1	51	30,600
Hayes	2	81	65,514
Ashland	2	474	365,375
St. Ignatius	1	107	64,628
TOTALS	46	10,265	\$6,216,628

\*Dollar amounts are computed for each school district by average per pupil cost for 1969-70. Value of property and buildings not included.







