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MONTANA CONSTITUTIONAL CONVENTION

STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

Judiciary Committee

Place of Meeting: Room 413, Capitol Building, Helena, Montana

Date Meeting Held: January 27, 1972

Hour Meeting Held: 10:30 A.M.

MINUTES OF THE TWELFTH MEETING OF JUDICIARY COMMITTEE

Roll Call:

David L. Holland, Chairman	-	Present
Mrs. Catherine Pemberton, Vice-Chairman	-	Present
Cedor B. Aronow	-	Present
Ben E. Berg, Jr.	-	Present
Mrs. Jean W. Bowman	-	Present
Leslie "Joe" Eskildsen	-	Present
Rod Hanson	-	Present
J. Mason Melvin	-	Present
John M. Schiltz	-	Present

DISCUSSION:

The committee immediately heard testimony by Delegate Charles B. McNeil who introduced himself as a small town lawyer from Polson. He advised the committee that he believes in the retention of election of judges at all levels and the upgrading of the judiciary, but felt the present problems of the judiciary are economic problems in the district courts. He stated that changing to a magistrate system will not help the judiciary and advocates keeping the justice of peace courts as constitutional offices and particularly elected offices. Any revision in the lower courts, he felt, should be left to the legislature. He criticized the so-called "Montana Plan" and felt that possible abuses would exist under this Plan. He particularly disliked the language referring to administrative control as he felt the Supreme Court could then have power to transfer judges anywhere they wanted and would abolish the separation of powers in the judiciary. Referring to Section 3 of the Montana Plan, he stated that the administrator could become a dictator over the district court judges. Section 4 of the Montana Plan, he felt, is a definite delegation of legislative functions to the court which is contrary to separation of powers theory and expressed concern over possible abuses that the court could make substantive law. He opposed Section 6 as he felt it would enable one legislative session to impose their political philosophy on the court by packing the court. He interpreted Section 9 to mean that once a magistrate office is created, this magistrate would have full power of the district court except in felony cases and this section would allow lay people to exercise district court powers.



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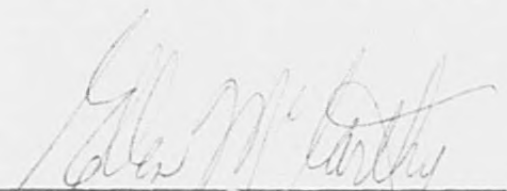
January 27, 1972

Page 2

Mr. McNeil was opposed to allowing district courts to fix magistrate salaries as nothing would prevent a district court judge from fixing a salary at \$75,000 or such amount. Mr. McNeil was also opposed to Section 10 of the Montana Plan which allowed the Supreme Court the power to change district boundaries as he was of the opinion that this was an improper delegation of legislative authority. He felt that clerks of court are not secretaries to the judges but are to perform public functions and are public servants. He therefore advocated retention of clerks. Section 12 was not favored by Mr. McNeil as he did not feel laymen are qualified to serve as magistrates and he further voiced his opposition to the fact that a judge would not have to be a resident of the judicial district for which he was chosen prior to being appointed. He opposed the nominating committee section as he felt the committee could be stacked by special interest groups and he stated that the research committee was contrary to the separation of powers. This committee, he stated, would have legislative, judicial and executive powers. Referring to Section 15 of the Montana Plan, Mr. McNeil stated this section could be abused under the magistrate system and he strongly voiced disapproval of Section 17. He then compared the testimony which Dean Robert E. Sullivan presented to the committee on January 20, 1972, and said Dean Sullivan's criticisms of the present judicial article could also apply to the Montana Plan.

The Committee questioned Mr. McNeil at length as to his opinions. Vice Chairman Catherine Pemberton then read thirty-two citizen suggestions to the members which they discussed.

There being no further business before the committee, they adjourned.



Ellen McCarthy, Secretary



D. L. HOLLAND, Chairman