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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: February 1, 1972

Hour Meeting Held: 2:00 P.M.

MINUTES OF THE EIGHTEENTH MEETING OF THE JUDICIAL 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 M. Bowman	-	present
Leslie "Joe" Eskildsen	-	absent
Rod Hanson	-	present
J. Mason Melvin	-	present
John M. Schiltz	-	present

DISCUSSION:

Mrs. Catherine Pemberton, Vice Chairman, called the meeting to order by introducing the members of the committee. Judge E. Gardner Brownlee of Missoula, Montana, submitted a statement of comments to the committee, together with two manuals which he prepared for use in training programs of lower courts and a copy of House Bill 362 which he advised had failed to pass in the last legislature due to the upcoming constitutional convention. Such material is made a part of these minutes. Judge Brownlee stated that the entire question of impeachment, removal or compulsory retirement should be left to the legislature, but streamline the impeachment procedure by providing that a "jury" of twelve senators selected by the Senate be the removal committee. He suggested the legislature shall have the delegate authority to determine the procedure. He then proposed a new section 1 for the constitution regarding impeachment procedures as to the Senate and Legislature. He stated that this new section was adopted and approved by the Montana Judges' Association in September, 1971. Judge Brownlee went on to explain his objections to the so-called "Montana Plan". In summary, he testified: 1. If all appeals have to go directly to the supreme court we will be overloading our supreme court to a breaking point. 2. Failure to provide for City Police Judges would leave us with chaos. If the constitution does not give the right to establish other courts, the legislature cannot do such. He said the Montana Plan would undoubtedly provide a generation of work for lawyers in trying to get interpretations of the provisions. 3. He felt that a provision for all courts to be courts of record would be too costly to the taxpayers. 4. He went on to say that



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there may be a violation of due process under that portion of the Montana Plan which states that a resident judge is not necessary and stated that from this standpoint, the Montana Plan must be classified as one giant backward step in the fight against crime. 5. He then referred to the "small claims court", stating that this would have to be courts of record under the Montana Plan and was of the opinion that by just changing the names from justice of the peace to magistrate would not bring about a great improvement of justice. 6. Judge Brownlee felt that the power of supervision is lacking in the Montana Plan proposal of allowing district judges to appoint magistrates and would create a bad reflection on the judicial image.

He was of the opinion the one constitutional change necessary would be the removal of the \$300 limit on justice of peace court actions. All other changes, he felt, should be remedied by the legislature. He then went on to list three steps to improve justice of peace courts on the constitutional level: 1. Elimination of the \$300 limit on jurisdiction in civil cases. 2. Add a clause whereby all district courts are given supervisory control over and rule making power for all lower courts. 3. Jury trials in criminal cases are guaranteed in the same manner as in the federal constitution and also permit a defendant to waive a jury trial. Questions and answers followed. Cedor Aronow discussed Delegate Proposal 53 regarding election of justice of the peace which Judge Brownlee favored. He stated that he opposed a government by committee as the committee is not responsible to the people and this is why he proposed a "jury" of the senate as then there would be a more responsive group.

James Oleson of Kalispell appeared before the committee and stated that he represented the Montana County Attorney's Association and submitted a proposal of the Montana County Attorney's Association which is a part of these minutes. Mr. Oleson suggested that the office of county attorney be retained in the constitution as an elective office and the legislature can handle any problems.

Mr. Bob Brooks, County Attorney from Broadus County, gave a perceptive on opposition of doing away with county attorney offices. He mentioned that there was a definite inattention to public duty primarily because of the compensation factor. He felt that most county attorneys tend to their private work rather than the public work. He pointed out the problem with conflicts of interests that arise between cases taken as a private attorney and those cases taken as county attorney. He favored elected officials. A copy of his statement is attached hereto and made a part of these minutes.

Andrew G. Sutton then appeared before the committee. He stated he represented the Montana County Attorneys Association and Garfield



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County Attorney. He favored retention of the County Attorneys Offices . A copy of his statement is attached and made a part of these minutes. Question and answer period followed his testimony.

Opal Eggert representing the Clerks of the District Court and Justice of Peace in Montana presented comments to the committee. She was opposed to any change in the judicial article as to the elective structure of officers of the court. Her only change was to make justice of the peace terms four years instead of two. She further favored retention of the present three level court system. The members of the committee questioned her for a short time. A copy of Ms. Eggert's testimony is attached and made a part of these minutes.

Sterling DePratu commented on retention of Justice of Peace Courts. He stated that he was a justice of the peace in Fairfield, Montana, and felt that these courts are improving themselves each year. A copy of his comments are attached and made a part of these minutes.

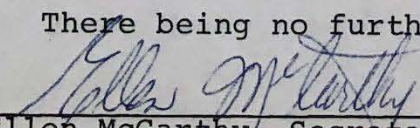
Bob Brooks, County Attorney from Powder River County, appeared before the committee and echoed Judge E. Gardner Brownlee's comments and remarks. He felt that if justice of peace offices are retained in the constitution they should have staggered terms.

Kenneth D. Clark of Miles City, Montana, appeared as lobbyist for United Transportation Unions, in favor of retaining the elective offices of the clerks. He stated that he spoke on behalf of the workingman and that there was a definite need for lower courts such as justice of peace courts for the workingman. He felt that guidelines on jurisdiction of justice of peace courts should be in the constitution. A copy of comments is attached and made a part of these minutes.

Walter L. Hammermeister representing Montana Sheriff and Peace Officers Association appeared in support of justices of the peace and asked that the committee recommend that such office be retained in the judicial system. His comments are attached hereto and made a part of these minutes.

Following this testimony, a statement was read from Robert L Ryan of Helena. Mr. Ryan, a retired justice of the peace, favored retention of justice of the peace courts and advocated upgrading the present system. His statement is attached and made a part of these minutes.

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


Ellen McCarthy, Secretary


David Holland, Chairman