The effect of the 1972 constitution on the administration of higher education in Montana.

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THE EFFECT OF THE 1972 CONSTITUTION
ON THE ADMINISTRATION OF HIGHER EDUCATION IN MONTANA

By

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CHAPTER I

INTRODUCTION

Higher Education is not simply another state service; the administrative structure of higher education cannot be considered an ordinary state agency. The unique character of the college and university stands apart from the business-as-usual of the state. Higher learning and research is a sensitive area which requires a particular kind of protection not matched in other administrative functions of the state.

Committee on Education and Public Lands
Majority Proposal
Montana's Constitutional Convention
1972

Because of the unusual character of higher education in Montana an examination of its administrative structure cannot be a cursory one. Such a study must consider what preceded the current arrangement and must examine the reasoning behind its creation. Most importantly it must assess the system's performance in terms of expectations and results.

The purpose of this paper is to determine how the adoption of the 1972 Constitution has changed the governance of Montana's system of higher education. It is based largely on historical works, quasi-official documents, and interviews with those most closely associated with higher education in the state. It attempts to state how and why the administration of higher education in Montana functions as it does.

On July 1, 1973 the new Montana State Constitution became effective. Ratified by the voters in 1972, this document created a
new governing structure for higher education in Montana. Until 1973, Article XI, Section 2 of the 1889 State Constitution had been responsible for Montana's system of higher education. It provided that

The general control and supervision of the state university system and the various other state institutions shall be vested in a state board of education whose powers and duties shall be regulated by law.

Today, almost a century later, in Montana's new constitution, Article X, Section 9, subsection 2A states:

The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility and authority to supervise, coordinate, manage and control the Montana University System.

In addition, subsection 2C of the same section and article of the 1972 Constitution decrees that:

The board shall appoint a commissioner of higher education and prescribe his term and duties.

The problem investigated is the difference the 1972 Constitution made in the legal and practical exercise of authority by the Office of the Commissioner compared to the authority exercised by the former administrative office, the Office of the Executive Secretary, which had no constitutional existence and operated under a constitutionally weaker board. Implicit in such a question is the assumption that the boards of both the 1889 and the 1972 Constitutions, while maintaining ultimate control over the state's system of higher education, would delegate their authority to the Executive Secretary and to the Commissioner, respectively. Therefore, an effort was also made to see what effect the new constitution has had on the activities of the governing board and on the responsibilities it delegated to its
administrative office.

Measurement and Data Collection Techniques

The authority of the Office the Executive Secretary and of the Office of the Commissioner was analyzed in terms of the Board of Regents' three main areas of responsibility: the academic, financial and administrative concerns of the state's colleges and universities. In each instance comparative studies were drawn up covering the two years before the constitution went into effect until at least two years following ratification.

Before studying the actual activities of the two offices some preliminary research was done to clarify the exact constitutional authority of each office. This, for the most part, entailed a document survey to find out the basis of the authority of the Office of the Executive Secretary, why it was felt a change from that office was needed, what effect the wording of the 1972 Constitution was meant to have and what effect it had legally.

The information was accessible in the records of the State Board of Education, the Board of Regents and the 1972 Constitutional Convention. Legislation passed after the new constitution went into effect was also studied for any additions, clarifications or deletions it made in the authority of the new board or in the Office of the Commissioner. In addition, pertinent Montana Supreme Court decisions and opinions of the Montana Attorney General were examined.

After ascertaining the boundaries of authority of the Office of the Commissioner in relation to that of the Office of the Executive
Secretary, the next step was to see how each office was using its constitutional authority. This part of the research involved interviewing those people who worked under the provisions of the 1889 and 1972 Constitutions—the presidents of the six units at the time of transition, the board members who served on both the State Board of Education and the Board of Regents of Higher Education, and officials who served in the Office of the Executive Secretary and in the Office of the Commissioner. These people were assured that their responses would be reported collectively rather than attributed to any specific individual.

**Data Analysis**

What was expected to emerge from the study was first a summary of the constitutional intent, the legislation, the administrative orders and rules and the legal decisions that pertain to the authority of the Office of the Executive Secretary and the Office of the Commissioner. For the most part, this information, which indicated the constitutional boundaries of authority awarded to each office, was fairly straightforward and easily presentable.

However, the second body of information produced by the study was more difficult both to summarize and to objectify. This data produced largely by interviews consisted of the various perceptions the respondents had of the authority exercised by the Office of the Executive Secretary compared to that of the Office of the Commissioner. Since this information was for the most part impressionistic any conclusion reached must be tentative and qualified. Moreover, it is
presented with the material from the document survey which, while more impersonal in nature, is still based on individual interpretation and perception. Therefore, the end result of the study is a descriptive analysis of the situation rather than a quantifiable and objective study.

**Identification of Actors and Terms**

Before attempting a comparison between the Office of the Executive Secretary and the Office of the Commissioner, the principal actors in the study must be identified and differentiated.

**The Office of the Executive Secretary.** The office was established by the State Board of Education in 1933 and was made responsible to that body. Following the ratification of the 1972 Constitution, the office was replaced by the Office of the Commissioner.

**The Office of the Commissioner of Higher Education.** The office was mandated by the 1972 Constitution. The incumbent was to serve at the pleasure of the Board of the Regents of Higher Education.

**State Board of Education.** The board was created by the 1889 Constitution to supervise the entire public education system in Montana. It was vested with "general control and supervision of the state university system." It was divided by the 1972 Constitution into two distinct boards—the Board of Public Education to supervise the public school system and the Board of Regents of Higher Education to supervise the university system. (The two boards together form the Board of Education for the consideration
Board of Regents of Higher Education. The board was created by the 1972 Constitution to supervise the university system. It was vested with "full power, responsibility and authority to supervise, coordinate, manage and control the Montana university system." Its members were appointed by the Governor, subject to senate confirmation. Upon the adoption of the 1972 Constitution the members of the State Board of Education whose terms had not expired were assigned either to this board or to the Board of Public Education.

In investigating the differences in authority between the Office of the Commissioner and the Office of the Executive Secretary, an examination must be made of the ability of each office to supervise, coordinate, manage and control higher education in Montana. These were the functions constitutionally assigned to the Board of Regents by the 1972 Constitution and so should serve as the basis for comparison of the two offices. In view of such a pattern of investigation these capabilities must now be defined.

Supervision. Supervision denotes the amount of responsibility the Office of the Executive Secretary and the Office of the Commissioner had in transmitting their directives and policies as well as those of the boards to the state universities and colleges and even more importantly the amount of authority the statements carried.

Management. In the case of the university system management is defined as the capacity of the administrative office to formulate policy to govern the system, to allocate funds to the universities
and colleges and to plan for the future of these institutions.

Control. In respect to the offices of the Executive Secretary and the Commissioner, control indicates the ability of the two offices to evaluate the various units of the university system, to recommend changes in any institution and to see that those changes are actually implemented.

Coordination. Within the university system coordination is identified as the capability of the offices of the Executive Secretary and the Commissioner to integrate the decisions made by the presidents of the units.

The Montana System of Higher Education

The Montana University System consists of six four-year institutions of higher education: Montana State University in Bozeman, the University of Montana in Missoula, Western Montana College in Dillon, Montana College of Mineral Sciences and Technology in Butte, Eastern Montana College in Billings, and Northern Montana College in Havre.

These six institutions are governed by the Board of Regents of Higher Education which has full constitutional "power, responsibility and authority to supervise, coordinate, manage and control the Montana University System." This board also shares responsibility with the local Boards of Trustees for the governance of community colleges. Finally, when combined with the Board of Public Education, which is responsible for all other public education in the state, it constitutes the State Board of Education. This latter board is
responsible for planning, coordinating and evaluating policies and programs for the entire educational system and for submitting comprehensive budgets for all of Montana public education.

The Board of Regents has seven voting members, appointed by the Governor with the consent of the Senate for overlapping seven year terms. No more than four of the members may come from the same congressional district or political party.

The regents are constitutionally mandated to appoint a Commissioner of Higher Education and to prescribe his term and duties. In addition, the Commissioner, along with the Governor and the Superintendent of Public Instruction, serves as a non-voting ex officio member of both the Board of Regents and the Board of Public Education.

The present scheme for governing higher education has been in existence in Montana since 1972. However, it is not a radical departure from earlier practices, but is rather the culmination of almost a hundred years of attempting to govern Montana's system of higher education.
Establishing the University System

From the start the control of higher education in Montana has been innovative, controversial and inconsistent. Its beginnings were in 1893 when, in accordance with the Constitution of 1889, the Montana Legislative Assembly established the State Board of Education and specified its duties and responsibilities. In relation to higher education it was to have general control and supervision, establish the rules and regulations for the governance of its institutions, grant diplomas and degrees, and exercise general control over all the receipts and disbursements of the institution.¹

In addition, after considerable political maneuvering and mollifying, the legislature established the first four institutions of higher education in Montana: the State University in Missoula, the State Agricultural College at Bozeman, the State School of Mines at Butte, and the State Normal School at Dillon.

The purpose of constructing four separate geographical institutions was to provide Montana's widely dispersed population with maximum access to a college education.² However, there was also considerable backing for a plan which would have created the University of Montana, including under one administrative set up and locating in one place an agricultural college, a school of mines and a state
university of liberal arts. Although defeated at first, the notion refused to die. In fact, two university presidents, Duniway and Craighead, were fired by the board for speaking out in favor of the idea.

Finally giving into pressure, in 1913 the legislature approved a chancellorship plan for Montana's higher educational system. The plan provided for

the administrative reorganization of the four institutions under one executive head to be called the Chancellor of the University System. His office was to be in the State Capitol at Helena, thus removing him from the immediate pressures that would be present were he to be located on any one of the campuses of the institutions.

His specific duties prescribed by the State Board of Education in 1918 were

to be chief executive officer of the University
to carry out the orders of the Board
to be responsible for the execution of all policies
to act as the medium of communication between the Board and other offices of the university
to attend and participate at meetings of the Board
to make numerous reports and recommendations, including a budget proposal
to sign diplomas and other papers of the university

More generally, he was to maintain unity of effort and coordination among the units and to eliminate any wasteful duplication.

This new system, called the University of Montana, consisted of four autonomous institutions governed by one central body, the State Board of Education, and its executive officer, the Chancellor; and was thus "the first administrative structure of its type in the United States."
Early Jurisdictional Disputes

However, even before the University System was created, the State Board of Education had to struggle to maintain its control over higher education in Montana. Friction developed early between the state board and the local executive boards under its authority. These four boards, composed of members from a particular institution's surrounding community and responsible only for that school, gradually began to assume what the state board believed to be unauthorized powers. The situation was worsened by the infrequent number of meetings held by the state board each year, which resulted in the local boards' making decisions not only on routine matters but on substantive policy issues as well. This, of course, led to more and more independent actions being taken by the local boards.

Initially, the State Board of Education tried some internal reorganization in an attempt to restrain the activities of the local boards. But matters were not resolved until 1909 when public resentment toward these boards reached its peak and the legislature removed "all final authority--if such ever existed--from the local executive boards (and) . . . the latter were definitely placed under the control of the State Board of Education."\(^8\)

The local boards were even further restricted in 1913 when the legislature established the University of Montana. In the enabling legislation, the Assembly provided that the "immediate direction, management and control of the respective institutions should be in the hands of the presidents rather than the local executive boards."\(^9\)
This scheme not only centralized the control of higher education in the State Board of Education but it also made the presidents directly responsible to that body, via the newly created position of Chancellor rather than to the local executive boards as had been the case.

The conflict was thus settled by the time the Chancellorship was implemented. However, the State Board of Education was embroiled in another serious dispute with the State Board of Examiners. Through its control of state finances, the Board of Examiners was consistently disrupting the operations of the state's institutions of higher learning. At times it would either refuse to honor legislative appropriations or else it would cut those already granted on the grounds that the state's revenues were not meeting its expenditures. Still, during the early years the Board of Education was apparently content to let the Board of Examiners have its way and no major conflict erupted.

In 1921 the dispute finally became public over the use of building allocations authorized by bond issue but not approved by the Board of Education. Hoping to resolve the jurisdictional overlap between the two boards, the State Board of Education included two members of the State Board of Examiners, the Attorney General and the Secretary of State on its committee to select architects and to approve building plans. Although this arrangement was not permanent, it postponed but did not eliminate the jurisdictional conflict between the two boards.

The controversy continued. Although no particular act of the State Board of Education was directly challenged, the State Board of
Examiners occasionally set up procedural obstacles to demonstrate its overall power. The unit presidents accused the board of causing "extra-ordinary" delays in granting approval of claims, neglecting to complete transfers of funds, losing claims, failing to inform them as to unexpected balances, and failing to answer their letters.

Finally, a dispute between the two boards over funds to be allocated to Northern Montana College erupted in the courts. It was eventually dismissed when the legislature approved a compromise funding plan agreed to by both parties. Spurred by the conflict, the legislature provided that the State Board of Education "shall determine the needs of all expenditures and control the purpose for which funds of said institutions shall be spent." However, it sidestepped the real question of who actually controlled the university system by leaving the power of audit in the State Board of Examiners while "providing for prior approval of the State Board of Education on ... matters pertaining to the University business."

Thus neither board was totally independent of the other. While the Board of Examiners could audit the Board of Education, it was also bound to follow the recommendations of that board. This jurisdictional compromise, reached almost twenty years before the 1972 Constitution went into effect, is still in existence today. No serious conflict has yet occurred to destroy its balance or to challenge its standing.
The Chancellorship

The position of Chancellor also had struggles and controversies. Even before the first Chancellor took office the legislature passed a bill abolishing the position. It took a veto by Governor Sam Smith to save the post.

In 1916 Dr. Edward C. Elliot, Dean of the College of Education at the University of Wisconsin, became the first Chancellor. Fully utilizing the powers delegated to him by the board, Elliot strengthened the position by using it as a mechanism for harmonizing the efforts of the various institutions and for achieving their administrative unification.

When Elliot resigned in 1922 to accept the position of president of Purdue University, Dr. Melvin A. Brannon was named his successor. While Elliot's main effort was to coordinate the programs, policies and finances of the various units by the use of his authority, Brannon attempted to reach this same end by utilizing a cooperative approach. Accordingly, the presidents were brought into more direct contact with the board, a move regarded by some as a weakening of the position of the Chancellor.

It was under Brannon's administration that Northern Montana College and Eastern Montana College were created. The maneuvering for position, the use of political expediency, and the in-fighting involved in their establishment along with the financial crisis facing the state resulted in the ouster of Brannon in 1933. So violent was the criticism of Brannon that the legislature abolished the
position of Chancellor over the objections of the board and despite Brannon's resignation. Again it was a governor's veto that saved the office.

This time, however, the legislature refused to be denied. Unable to gather enough votes to override the veto, it instead withheld funds for the salary and expenses of the Chancellor. The board was forced to appoint an Executive Secretary to handle its administrative chores. It also gave legal status to the Executive Council (composed of the six unit presidents) and mandated that it present policy recommendations to the board.16 Yet, according to the Governor's Committee on Reorganization published in 1942, this arrangement amounted to

... very inadequate executive control because
(1) the presidents cannot take a disinterested view of educational situations that affect their institutions, and (2) professional courtesy requires that they do not raise too serious objections to the requests of a colleague.17

While conceivably the Executive Secretary could have exercised the powers of a Chancellor, the Board chose for him not to do so. He will have no authority over the Presidents of the units, his duties comprising for the most part the presentation of business and suggestions to the Board of Education. Where Brannon had had authority to initiate or take action, (he) would not have this. In all other respects, his office would function the same as Brannon's.18

Henry H. Swain, who served as Brannon's executive secretary, was appointed to the position and "asked by the board to keep things going as nearly as possible as in the past."19 After his death in 1941 Swain was replaced by Miss Dorothy Green.

Two years later when the 1943 legislature met, many of its
members had read and taken to heart the report of the Governor's Committee which had recommended that the board employ a competent educator to serve as its executive officer and to restore to the system the effectiveness of a chancellorship structure. By that time, the legislators realized, along with the members of the board, that a strong central administrator was again needed. During this session Governor Ford, himself led the successful fight against any restrictions in appropriations for the Office of Chancellor.

Thus, the board in 1943 appointed Dr. Ernest O. Melby, President of the State University at Missoula, as Chancellor. Granted leave from his post in Missoula, he reserved the right to resume his duties as president should he desire to do so. "The uncertainty as to whether he would be long in the new office had the effect of preventing whole-hearted cooperation on the part of the other unit presidents." Also there was a feeling throughout the state that he was favoring the State University. Hence, in a little over a year he resigned his position and requested a return to his former post. He was leaving, he said, because he was convinced that

the position of the Chancellor is untenable and in my judgment the expenditure for the office is unjustified. The Board did not have the power it needed to efficiently administer the University system. While it was charged with the responsibility of administering the institutions the authority to control rests with the Legislature.... Because the Board was weak the Chancellor's office was also weak. It was doubtful that a Chancellor would be able to effectively function amid the face of political, constitutional and personal jealousies.

The board agreed with his reasoning, accepted his resignation, and then appointed him Executive Secretary of the State Board of
Education. In his new position, which had no legal status, he would not be executing the duties of a chancellor, but would act as chairman of the Executive Council, visit the six units and make investigations as commissioned by the board.\textsuperscript{23}

In this new capacity, Melby proposed a scheme in which Western Montana College would become a vo-tech school and Northern Montana College and Eastern Montana College would both become junior colleges. He resigned when his plan was not accepted.

So in 1945 Dorothy Green again took over as Executive Secretary until Dr. George A. Selke, President of St. Cloud Teacher College, was appointed Chancellor in 1946. His appointment was most likely in response to a legislative order for the board to employ "an executive head of the University of Montana and prescribe generally his powers and duties."\textsuperscript{24} Selke accomplished little and left in 1950 after serving slightly more than four years.

Seven months after his resignation, the legislature effectively abolished the Office of Chancellor of the Greater University. The presidents, however, pressed for some form of central office to replace the position and in 1951 the legislature appropriated the money for and the board agreed to hire an executive secretary who would serve in a capacity similar to that exercised by Dr. Swain almost twenty years earlier.

More and more the Executive Council (later to be renamed the Council of Presidents) was used as a means of shifting details, but without a Chancellor, this group arrived at its recommendations through the process of trading, dickering and political maneuvering.\textsuperscript{25}
In 1953 the position of Executive Secretary was formalized by law and made responsible to the State Board of Education. Dorothy Green, already having been involved in the governance of higher education, was named Executive Secretary. She was followed in 1960 by Russell Barthell. Alfred Dubbe succeeded Barthell in 1962 and in turn was replaced by Edward Nelson in 1965, who held the position until it was abolished by the new constitution in 1973.

Lincoln Ainkins writes that the hiring of an Executive Secretary ended a dream,

...a dream that an integrated system of higher education could be built around the person of a Chancellor, without at the same time giving to that person all the power and authority necessary for the successful operation of such a system.\textsuperscript{26}

It was not until 1972 at the State Constitutional Convention that Montana would again be given a chance to pursue that dream.
FOOTNOTES


3. Ainkins, p. 25.


6. Farrant, p. 5.

7. Farrant, p. 2.

8. Ainkins, p. 87.


10. Ainkins, p. 218.

11. Ainkins, p. 222.


15. Ainkins, p. 147.


17. Montana Governor's Committee on Reorganization and Economics (Helena, 1942), p. 8.

18. Chennett, p. 357.


20. Montana Governor's Committee on Reorganization and Economics, p. 45.
Ainkins, p. 163.

Chennett, p. 392-3.

Ainkins, p. 164.

Chennett, p. 399.

Ainkins, p. 147.

CHAPTER III
THE ADMINISTRATION OF HIGHER EDUCATION
UNDER THE 1889 CONSTITUTION

The State Board of Education

According to the Montana Supreme Court in State v. Brannon, its landmark decision of 1929, the

... board of education is a part of the executive department, and is but an agency of the state government. The Legislature may prescribe the extent of the powers and duties to be exercised by the University of Montana. ... The assertion that the legislature is without power to prescribe or regulate the functions of the University or one of its units cannot be admitted.¹

The Court further said that the language of the constitution in regard to the Board of Education was purposefully developed.

Observe the care employed in the construction of this sentence. The general control and supervision of the State University and the various other educational institutions are vested in the state board of education whose powers and duties shall be prescribed and regulated by law. A law may be enacted by the people exercising the initiative or by the people acting through the Legislature. In either case the power to enact a law is illimitable, except as restrained by the Constitution (emphasis by the court).²

Such constitutional language and ensuing court interpretation placed the board under the firm control of the executive and legislative branches of government. Thus the Board of Education under the 1889 Constitution functioned primarily as an administrative organ of the state. While according to law it had general control and supervision over the state's institutions of higher education,
most of its duties merely involved record keeping, property and personnel management and some minor rule making. At times it was involved in some policy making but only with prior legislative approval and constant legislative scrutiny.

Any power the board had to pursue even these activities was derived solely from statutory grants. In *Veeder v the State of Montana* the Court wrote that while the board is authorized to control the state's institutions of education, the legislature has the authority to define and circumscribe the power and duties of the board as it exercises that control. In *Veeder v the State of Montana* the Court wrote that while the board is authorized to control the state's institutions of education, the legislature has the authority to define and circumscribe the power and duties of the board as it exercises that control.³

Two years later the Court confirmed this decision in the *State v. Dragstedt* when it ruled that any action taken by the board must be initially authorized either by direct legislative expression or by implication in the general laws pertaining to the board.⁴ In addition, other Court decisions, while granting the board new responsibilities, simultaneously pointed out the board's reliance on the legislature for its authority. In a decision reached in 1939, the Court ruled that because the board had been given the legislative authority to enter into a contract, any regulation stipulated in such a contract would have the same effect as law.⁵ Fifteen years later, using similar reasoning, the Court ruled that the board could be sued for breach of contract.⁶

Finally in 1963 the Court showed just how much authority it felt the legislature had in university affairs when it failed to question the legislature's intervention in such internal university matters.
as faculty selection, a prerogative that had been accorded to the board by the legislature itself.

The cumulative effect of these decisions gave virtually unlimited authority to the legislature to intervene in the activities of the university system and ensured that the board would act only within the confines of legislative directives. Yet, the board was allowed, within limits, to have some discretion over its activities. Even in the highly prohibitive Veeder decision, the Court ruled that the express power of the board to

\[\ldots\] manage and control the business and finances of the institutions carries with it the implied power to do all things necessary and proper to the exercise of the general powers.9

As was mentioned, the Dragstedt decision also allowed the board to act on the authority of what was merely implied in law. Basically, however, the board remained an agency of the state. It enjoyed no more responsibilities or privileges than any other state body.

In 1958 suggestions were made to upgrade the board's position in the government. A study prepared for the legislative council by Homer Durham of the University of Utah urged that the university system constitutionally be made a body corporate

\[\ldots\] with all the rights, immunities, franchises and endowments heretofore granted or conferred, subject to the general laws of the state.10

It was also recommended that the board be "fully capable and responsible for maintaining an effective University fiscal system."11

If these two recommendations had been followed the Board of
Education would have become a completely independent entity, enjoying all the freedoms of a legal corporation, rather than having to depend on the legislature for its authority to act. However, this section of Durham's report was given little attention by the Legislative Council and the board's powers remained unchanged.

In addition to its authority being limited by the legislature, the board was further encumbered by having to oversee not only the state's institutions of higher education but also all public education as well. This overwhelming responsibility prevented the board from spending an adequate amount of time in either area. As a result it devoted most of its time and attention to dealing with the problems of higher education, while acting only as a trouble-shooter for the state's system of public schools. Even with such a compromise the board was still spreading itself too thin in regard to the university system.

The Durham report recommended that the board in dealing with university matters view itself as the Regents of the University of Montana ex officio. This, the report said, could be accomplished by amending Article XI, Section XI of the Constitution to read:

The Board shall serve ex officio as Regents of the University of Montana and shall use and adopt this style in all dealings therewith.

As a result, the Legislative Council submitted to the 36th Legislature a constitutional amendment which provided for two separate governing boards for education in Montana. One board would concern itself with the university system and the other with public schools.
In 1959 the legislature did adopt a statutory change in the Board's structure and declared the State Board of Education to be the "regents of the Montana university system." when acting on the affairs of the units of the university. The legislature also approved a constitutional amendment similar to the one proposed by the legislative council, but was unable to present it to the voters for ratification because it lacked the constitutionally required signature of the Governor. Thus, Montana was left with legislation which was primarily conceived as "a stop-gap measure" until the voters had the chance to approve the constitutional amendment. "This legislative name-shuffling, however, did little to alleviate the difficulties inherent in a dualistic board." 

Because of the vast array of concerns under its supervision and the limited amount of authority it had to deal with such matters, the board never fully developed any formalized mechanisms for governing the system. Indeed, the by-laws and policies of the board were simply material extracted from legislation and regent meetings that could be interpreted as policy. There were no uniform guidelines or rules for the governance of the various units of the system. Thus the board, as it existed under the 1889 Constitution, was primarily a caretaker for Montana's institutions of higher education rather than a governing board.

The Office of the Executive Secretary

The Office of the Executive Secretary, the administrative office of the State Board of Education ex officio Regents, was affected by
the board's unwillingness to develop policy guidelines. Having no constitutional status, it was dependent upon legislative decree for its existence. The legislature, for its part, provided only that the board appoint an Executive Secretary for the university system who would also serve as the board's secretary when it sat as the university regents.18 (In 1959 an Attorney General's Opinion ruled that in such a capacity the Executive Secretary was to keep the minutes and prepare the agenda for the board's meetings, send out pertinent notices to concerned parties and do whatever else the board directed.)19 The legislature left to the members of the board the responsibility to decide the secretary's term and salary and to prescribe his general duties.20

The board bestowed very few formal duties upon the Executive Secretary. At various times, he was given specific responsibilities such as transmitting the budgets for the units to the State Budget Director and reviewing with the Council of Presidents the state's academic programs.21 However, these tasks were not the result of any deliberate effort by the board to delineate the duties of the Executive Secretary. They were the product of the board's ad-hoc attempt to deal with some of its most pressing concerns.

Thus, most of the tasks performed by the Executive Secretary were assumed on the basis of precedent and the consent of the board. When the office was first established, it was understood that, in addition to performing secretarial statistical and clerical tasks, the Executive Secretary was to be secretary to the Executive Council and
responsible for the student loan fund, high school honor scholarships, and for the effective functioning of his office and was to act as the agent of the board when dealing with other state agencies.\textsuperscript{22} Later he was given the authority to coordinate the enrollment figures, budgets, and academic programs of the six units. But again, these new responsibilities were never formally delegated to the Executive Secretary; they were simply assumed by his office as he and the board felt necessary.

While it was the board's intention that the Executive Secretary pursue standards of uniformity and coordination among the units, the position was not expected to provide the board with any independent judgments. Accordingly, the Executive Secretary served the board primarily as a functionary, carrying out those administrative tasks for which the board had neither the time nor the absolute responsibility to perform itself. The board, having little authority itself, gave the Executive Secretary few specific occasions in which to act independently and virtually no opportunity to exercise individual judgment or initiative. The office was "pretty much a 'service station' for the presidents and Regents in Helena."\textsuperscript{23} It provided them with reliable and uniform information and acted as a common channel through which their various concerns could be voiced.

The Durham report had urged the board to formalize in its rules the position of executive secretary to chief executive officer of the board and to recognize the holder of that office as its chief policy advisor on all university matters. In fact, it went so far as to
say that the

. . . Board should view the selection, recruitment and appointment of the Executive Secretary as its most critical and significant function so far as the University system is concerned. It should consequently expend the pains, time and energy required for this infrequent, but critical task.\textsuperscript{24}

At the same time that the report was being published, the Governor's Committee on Education Beyond High School released a compilation of the opinions and recommendations of the approximately 2,500 people who attended the various town meetings on education held throughout the state. Nearly all consulted felt that unified control was essential to the well-being of the university system. Furthermore, it was felt that this control could best be obtained by placing a strong executive director over the entire system.\textsuperscript{25}

Yet the position of executive secretary remained unchanged. Its main responsibility was still to carry out the will of others. The holder of that office had little control over the state's system of higher education. Supposedly the State Board of Education was responsible for the governance of the university system. But that body, limited in both its authority and its capabilities, was itself controlled by the state legislature. This body made the ultimate decisions affecting higher education.

The Legislative Council in 1960 recommended that the duties of the Executive Secretary be expanded in order to centralize the governance of the university system and to provide a greater degree of coordination among its units. The office, the council said, while
still functioning primarily as a coordinating device should play a larger role in data gathering and information dispersal. It was also urged to involve itself in examining building needs, budgeting, and curricular activities and to provide the regents with a thorough analysis of its findings. More importantly, the council felt that all proposals from the university units to the board should be routed through the Executive Secretary's office and be passed on to the board with accompanying recommendations. The council wanted the Executive Secretary to become an active participant in the administration of the university system. With the additional responsibility suggested by the council, the executive secretary would have become an advisor to the board and at times would have been able to act upon his own analysis of the situation. However, the council left it up to the board to institute the proposed changes, which despite even earlier recommendations and reports it failed to do.

Thus, the control of higher education in the state remained in the hands of the legislature. The board acted as the Legislature's administrative organ, and the Executive Secretary functioned as the board's clerk and record keeper. No group was both willing and capable of changing this situation until 1972 when the delegates to the Montana Constitutional Convention met to revise the 1889 Constitution, which was the foundation of the existing arrangement.
FOOTNOTES

1^State v Brannon 86 Montana 200, 208, 283 P202 (1929).
3^State ex rel Veeder v State Board of Education 97 Montana 121, 133, 33 p29 516 (1934).
5^State ex rel Keeney v Ayers 108 Montana 547, 92 P29 306 (1939).
6^Meens v State Board of Education 127 Montana 515, 276 P2d 981 (1954)
7^Brown v State Board of Education 142 Montana 547, 385 P2d 643 (1963)
8^Montana Code Revised 1947. Sec. 75-8501(11).
9^Veeder, P. 133.
11^Durham, p. 43.
12^George Peabody College for Teachers: A Division of Surveys and Field Service, Public Schools in Montana (Helena, 1958), p. 3.
14^Durham, p. 1.
15^Montana Codes Revised 1947. Sec. 75-8501.
18^Montana Codes Revised 1947. Sec. 75-8501 (11).
19^State Board of Education ex officio Regents of the University System of Montana, By-laws and Policies (Helena, 1963).
20 Montana Codes Revised 1947. Sec. 75-8501 (12).

21 By-Laws and Policies.


25 Montana Governor's Committee on Education Beyond the High School, Summary of Ideas and Opinions Expressed at Public Meetings (Helena, 1958).

CHAPTER IV

DRAFTING THE CONSTITUTION

The Montana Constitutional Convention began its debate on the education article on March 10, 1972. The comments of the chairman of the Education and Public Lands Committee, Richard Champoux, who managed the floor discussion, are illustrative of the intentions of that committee:

Higher Education is not simply another state service. The administrative structure of higher education cannot be considered an ordinary state agency. The unique character of the college and university stands apart from the business as usual of the state. Higher learning and research is a sensitive area which requires a particular kind of protection not matched in other administrative functions of the state.¹

Accordingly, the majority proposal cites as one of its most significant revisions "a revised administrative structure for... higher education."² In this respect, it established a separate and independent Board of Regents which, together with the Board of Public Education, would constitute the State Board of Education. In addition, it gave constitutional existence to an executive officer of the Board of Regents and attempted to free the regents from excessive legislative control.

Changing the Structure of the Board

The first issue the Convention dealt with concerned the board's responsibility towards both higher education and public education.
The Committee recognized that Section 11 of the 1889 Constitution, which mandated the board to exercise "supervision and control" over the state's entire educational system, made it virtually impossible for the board to deal with the vast number of issues claiming its attention. It therefore proposed to divide the board into two separate entities. One would be concerned with the problems of higher education while the other would be attuned to the particular problems of elementary and secondary education.

The majority report of the Committee stated that Section 11 was written when there were fewer than 12,000 students in Montana's educational system, compared to the more than 200,000 students enrolled in the state's schools in 1970. The Committee felt that such a change in student enrollment demanded a corresponding change in the methods of administering to student needs. The best way to achieve such a change was for the board to give more time and attention to higher education without being distracted by the concerns of public education. During the Convention's deliberations, several amendments were offered which would have retained the one board system and invalidated any further changes in the board's power. These amendments were defeated by wide margins. On the other hand, the majority proposal, with minor modification, was adopted by the Convention.

Establishing the Office of Commissioner of Higher Education

During the debate over higher education, the question of establishing the position of Commissioner of Higher Education arose. There was little disagreement over the issue, however. Most of the
delegates appeared to agree with Delegate Ruggs when he noted that all the Convention was doing was giving the present executive secretary a little more authority "to arrange things the way they (the regents) want." If the regents were to concentrate fully on the concerns of higher education, they would need an executive officer capable of acting on their rules and proposals with authority and flexibility. This would free the board from having to deal with excessive administrative detail and allow it to devote a greater amount of time to more comprehensive pursuits such as planning and coordination. Following a brief discussion, the position of commissioner was given constitutional status. The Convention thereby provided Montana higher education with an official who could coordinate and centralize the administration of the university system.

**Changing the Authority of the Board**

The first two changes the Convention made in the administration of Montana's system of higher education increased the amount of time and attention the board could give to the state's colleges and universities. The third and most dramatic change was instituted to increase the board's capability to govern by increasing its authority and granting it independence from the state legislature. "At this juncture, it was clear that the will of the Convention was to change substantially the legal structure of higher education in Montana." Prior to the opening of the Convention the delegates were admonished to give serious attention to whether the authority of the legislature to prescribe and
regulate powers and duties of the board is in any way limited by the phrase "the general control and supervision of the state university...shall be vested in a board of education." 

The Court, the Convention was told, had failed to make any attempt to balance the authority of the two bodies and had instead indicated in the Brannon decision that the legislature may prescribe and regulate the duties and powers of the board without limitation.

Similarly, Champoux thought that the major difficulty with the old constitution was in restraints it put on the board. He argued that the constitution established the board and gave it authority to supervise and control the university system and then took that power away with the phrase, "whose powers and duties shall be prescribed by law." Champoux, representing the majority of the Committee on Education and Public Lands, wanted a board that was free from most legislative control, one that did not need the courts to balance its authority against the authority of the legislature. He maintained that the power of the board over the state university system should be absolute.

Although not a member of the Committee, Delegate Heliker summarized the intentions of the majority's proposal when he said that the report was aimed at preventing the legislature from becoming the Board of Regents. The proposal would give the board the authority to be the Board of Regents and would give the legislature the opportunity to control the board through the legislative audit.

The proposal itself claimed that the control of higher education had fallen prey not only to intrusion by the legislature but also to the growing bureaucratic state. It relied on Moos and Rouke's
In Montana the legislature, budget offices, auditors, purchasing and personnel departments, and central building agencies have at times all affected the functioning of the board. Because most proposals made by the board needed the participation of a number of groups to ensure their success, the board often was quite powerless in the eventual course of the proposals' implementation. Master plans, construction schedules, and even academic programs were altered, impeded or even eliminated altogether due to the board's impotence in the face of so many other agencies competing for control of the university system.

To alleviate such situations the majority report recommended the establishment of a strong Board of Regents. Such a board, it argued, would best be able to promote the well-being of the university system:

The power to coordinate and operate the system of higher education is one which properly belongs to an informed board of regents who have the knowledge and ability to determine rationally the course of higher education... 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 from short term political whims.11

The major thrust of the majority's report maintained that a Board of Regents which had the power to control and manage its own affairs would improve long-range planning for higher education in Montana and would eliminate competition for funds among the units, duplication of...
courses and degrees, and unnecessary multi-level administrative processes. It went on to say that a board with the proper amount of authority could reduce expenses, centralize policy-making, and approach decision making with a broad and objective view of the entire system.\textsuperscript{12}

The Committee's majority report was, in fact, listing very practical reasons for strengthening the authority of the regents. If the board were allowed to exercise complete control over higher education, the battle for legislative funds would take place in the board's offices rather than in the state capitol. University monies would be channeled into urgently needed activities rather than into wasteful efforts. Decisions would be made by those closest to the situation rather than by those whose diverse interests ensure unfamiliarity in many instances. If the board were no longer dependent on other state agencies for implementation of its policies, efficiency could be realized throughout the university system. Such uniformity combined with the centralization and coordination of policy making was the goal the Committee hoped to achieve through its proposed constitutional revision.

The original language of the Committee's proposed constitutional change was; with its approval, amended at the onset of floor debate. While the amendment maintained the powers of the regents essentially as the Committee proposed, it eliminated from the provision the words "body corporate" which had caused considerable consternation and confusion among the delegates. Instead it provided that the regents would have full power, responsibility and authority to supervise, manage and control the university system.\textsuperscript{13} The word "coordination" was
later inserted after the word "supervise" by a voice vote of the Convention. The amendment was then passed by a 82-14 margin.

Other amendments were offered which would have given the legislature control over two of the regents' most important functions. One amendment proposed legislative control over university finances while the other sought legislative management, not only of the system's finances, but of its administration as well. Both proposals were defeated. Such action indicated the convention's desire that the new Board of Regents share its authority over higher education with no other state group, not even with the legislature.

The wording of the constitution also demonstrated the resolve of the delegates to shift the function of defining the board's power and duties from the legislature to the board itself, limited only by the express language of the constitution and reasonable interpretations of that language. For instance in Article X, Section 9 (3a), there is the express provision that while general supervision over the public school system rests in the State Board of Public Education, the legislature has the prerogative to provide the board with other duties. No such language is found in Article X, Section 9 (2a) which deals with the Board of Regents. Also noticeably missing from that provision is the restrictive phrase, "as regulated by law."

Thus, the 1971-72 Constitutional Convention radically altered the administration of higher education in Montana. It narrowed the jurisdictional responsibilities of the board and mandated the establishment of a strong executive officer to aid the board in its pursuits and to
serve as the centralizing agent for many of its programs. Finally, it took efforts to ensure that the new board would be a semi-independent department of the state government, subject only to indirect legislative and executive control through legislative appropriation and audit and executive appointment.

The delegates to the Convention made these changes in an attempt to provide a more efficient and effective method of administration for the state's system of colleges and universities. However, the results of their actions would not become apparent until the new constitution went into effect in July 1973.
FOOTNOTES


7 Waldoch, p. 86.


10 Montana Constitutional Convention Committee on Education and Public Lands, p. 34.

11 Montana Constitutional Convention Committee on Education and Public Lands, p. 35-36.

12 Montana Constitutional Convention Committee on Education and Public Lands, p. 36.


CHAPTER V

THE ADMINISTRATION OF HIGHER EDUCATION
UNDER THE 1972 CONSTITUTION

The State Board of Regents

Three years after ratification of the constitution, Montana's Supreme Court attempted in Judge v the Board of Regents to harmonize the long-established constitutional powers of the legislature with the newly acquired powers of the regents. Its ruling did little, however, to substantiate the new authority the board was to have over higher education in the state. The court recognized the principle of regent independence intended by the drafters of the 1972 Constitution but it also insisted that legislative control of higher education was established through the appropriation process. Furthermore, it declared that co-existing with the legislative power to appropriate funds was the power to control those funds through itemization. Still, it warned that the legislature could not use line-item appropriations to do indirectly what was impermissible for it to do directly:

Line item appropriations become constitutionally impermissible when the authority of the Regents to supervise, coordinate, manage and control the university system is infringed by the legislative control over expenditures.

Yet, the 1975 State legislature's use of line itemization and summary procedures for compliance were held to be proper exercises of the legislature's powers of appropriation

... to the extent the conditions do not infringe on the constitutional powers granted to the Regents. This means
the conditions must be individually scrutinized to determine their propriety. The fact that there are numerous conditions and a requirement of blanket compliance does not in itself infringe upon the Regent's constitutional powers.3

The Court, limiting its decision only to this one issue, set no clear precedent for either the legislature or the board to follow. It simply maintained that under no circumstances could "the powers of one be exercised or encroached upon by the other."4 While declaring legislative control over presidents' salaries and private trusts unconstitutional, the court in most instances left the door open for further judicial scrutiny. The Judge case, the regents' sole challenge to encroachments on their new constitutional authority, did not provide the board with the legal guarantee that had been expected. The Court refused to recognize the board as the ultimate authority over the university system. It instead ruled that the legislature could through the use of line-item appropriations and obligatory compliance procedures involve itself with the affairs of the system as long as such exercises did not infringe upon the board's power to supervise, coordinate, manage and control higher education in the state.

The legislature itself had little intention of relinquishing the control it had enjoyed over the state's university system under the old constitution. Accordingly, the post-1972 legislation did not vary greatly from that which it had passed earlier. As a result of the independence given the board by the new constitution, however, many laws concerned with the powers and duties of the board and the executive officers of the various units or that dealt with the
academic and administrative affairs of the units were no longer the prerogative of the legislature. Statutes falling under immediate scrutinization should have included those relating to the purpose of the units, the system-wide use of private funds, the building construction undertaken throughout the system, the specific duties of the regents, and the responsibilities delegated to the employees of the university system. Yet, the legislature continued to pass measures that dealt with the construction of a student union at Montana State University, donations of gifts at Western Montana College, and the type of instruction provided at Northern Montana College.

The legislature went so far as to determine what the powers and duties of the Board of Regents should entail. The statutes it passed mandated the board to adopt various rules for its government including appointing a budget committee, keeping records of its proceedings, issuing annual reports, visiting the campuses of each unit at least once a year, and selecting and using an official seal. The board was also instructed to grant diplomas and honorary degrees, to act as a receptacle for all the property and income due the units, to control all the property of the system, including its buildings, grounds, books, and records, and to appoint a president and faculty for each unit and to fix their compensation. Finally the board was to prevent unnecessary duplication of courses among the units.

Ironically a report prepared in 1942 which listed the statutory powers of the State Board of Education in regards to higher education...
included those same statutory responsibilities that were assigned to the Board of Regents after ratification of the constitution. The independent authority granted to the Board of Regents by the new constitution was to have been subject only to indirect legislative control through the powers of appropriation and audit. Accordingly, these statutes should have been challenged and eliminated from the code books or at least recodified under regent direction. Yet neither action took place.

Instead the legislature continued to function in the same manner as it always had. Ignoring the mandates of the new constitution that the board be regarded as a semi-autonomous body of government, it continued to treat the regents as simply another administrative organ of the state. It not only intruded upon the prerogative of the board to govern itself but encroached upon its authority to set university policy. The legislative power of appropriation and audit were not intended to include mandating an official seal for the board nor determining academic programs for the units. This amounted to intrusion into the board's power to supervise, coordinate, manage, and control the university system as set down in the Judge decision.

Still the legislature never made an effort to erase these types of statutes from the books nor did the regents attempt to force them to do so. Thus, the new Board of Regents functioned under a state Supreme Court decision that did little to uphold its authority and worked with a legislature that refused to recognize the regents' additional power. In essence, the authority of the board, though
greatly expanded in the constitution, did not change a great deal in how it was interpreted by the courts or in how it was recognized by the state's lawmakers.

The Commissioner of Higher Education

The administration of the university system did change drastically in one important respect. The Board of Regents did take measures to ensure that the Office of the Commissioner would have more responsibility, authority and direction than did the Office of the Executive Secretary. The responsibilities and workload of the office quadrupled. It had new authority in academic program review, budgeting, accounting, and in almost every area where decisions were to be made. Furthermore, it had what the first commissioner called

... a mandate and public expectation to reexamine and evaluate the total management and governance of the University System. 10

To clarify and formalize these numerous new duties, a Policy and Procedures Manual was developed by the middle of the first commissioner's tenure. No longer was the executive officer expected to rely on precedent and informal agreement in carrying out the general responsibilities laid down for him.

Naturally, the Commissioner was charged to carry out the tasks previously administered by the Executive Secretary. These duties consisted of maintaining coordination among the units and performing secretarial tasks. They involved little decision making and required almost no initiative on the part of the executive officer. Thus, the Commissioner, like the executive secretary before him was to
act as State Coordinator of Community Colleges.
act as coordinating officer for all inter-unit councils and committees.
act as secretariat for the Montana Commission on Federal Higher Education Programs.
act as secretariat and state certifying officer for the Western Interstate Commission for Higher Education.
summarized enrollment reports from each of the units and prepare enrollment projections for each unit.
prepare the agenda, write and maintain the minutes for the Board meetings.
maintain building files on all projects at each of the units, including bond issue proceedings and transcripts on financing.\textsuperscript{11}

Of more importance, however, were the responsibilities conferred upon the Commissioner by the board that had not been accorded to the Executive Secretary. Both in their scope and in the authority they carried, these responsibilities far exceeded any previous tasks assigned to the Executive Secretary. For instance, the Commissioner was authorized to control such inter-unit matters as budgets, curriculum, and extension activities and to prepare for the board a proposal for the allocation of state funds to the various units. He was also instructed to see that board policy was carried out on a system-wide basis and to establish and implement any other regulations necessary for the proper governance of the system.\textsuperscript{12}

In other words, the Commissioner was given the opportunity to issue his own recommendations and \textit{to establish} his own administrative rules and regulations for the administration of the system. While the Executive Secretary was expected only to react to dictates of others, the Commissioner was granted the authority to act on his own initiative. He not only coordinated the paperwork of the system but coordinated and controlled its entire operation.
Nowhere was this more apparent than in his involvement with the curricular affairs of the units. All new academic programs were submitted to him for his recommendation before being sent to the board. In addition, he was responsible for initiating and coordinating program reviews of any existing programs whenever he felt necessary. Here too his recommendations would be forwarded to the board. Thus the role of the board's executive officer changed from that of acting on behalf of others to that of performing on his own authority and initiative.

Accordingly, the Commissioner had a much different relationship with the unit presidents than did the Executive Secretary. While the secretary operated on a more or less equal basis with the presidents, the Commissioner, according to the dictates of board policy, became their immediate supervisor. According to board policy, the Commissioner "as the agent of the Board" was to carry out his responsibilities through the presidents. Any administrative action taken by a president would have to be done under the supervision of the Commissioner. The Commissioner also was empowered to assign additional duties and responsibilities to the presidents. Furthermore, the Commissioner had to authorize any announcements of board policy before they were made public by a president. Finally, the board went so far as to require that

\[\ldots\text{a dispute between the Commissioner and a president respecting the current interpretation of Board policy, the Commissioner's determination shall prevail, but shall be subject to appeal by the president to the Board.}\]
The relationship between the Executive Secretary and the presidents was never so formally delineated. The Commissioner's role among the presidents, however, was not only detailed at length but was done so to demonstrate the importance accorded the new position. The board had delegated a great deal of responsibility to the Commissioner; in order for him to exercise it as intended by the board, he needed the compliance of everyone working within the system. The board ensured that such an arrangement would be followed by making it clear in its own policies that the new authority of the Commissioner could not be ignored.

Another way of achieving this same end was to increase the visibility of the Commissioner. The board accomplished this by entrusting him to act as its "agent of communication". While the Executive Secretary was charged to deal only with correspondence from faculty members and others closely associated with the units, the Commissioner dealt with communiques not only from the faculty but from the legislative and executive branches, students, and all other state institutions. In turn, he also represented the board to the legislature and to the public. The Commissioner was not only delegated new authority but he also was given the responsibility to secure compliance from the university officers and, at the very least, the attention of all other interested parties.

The constitutionally established position of commissioner was remarkably different in the authority it carried, in the activities it pursued, and in the attention it generated from that of the Executive Secretary. Yet the Board of Regents, the body responsible for such
a dramatic change, was still functioning, as far as its own authority was concerned, as if the Constitutional Convention had never taken place. Because of such a paradoxical situation the individuals who were the most closely associated with this new board and its new executive officer would have to be the ones to provide the answer to how much the 1972 Constitution actually affected the administration of higher education in Montana.
FOOTNOTES

2. Judge, p. 450.


CHAPTER VI

ACTUAL CHANGES MADE IN THE ADMINISTRATION
OF HIGHER EDUCATION

The presidents who served under both the Executive Secretary and the Commissioner indicated that the main difference between the two positions was the degree of informality inherent in the modes of operation of each of them. According to the presidents, the Executive Secretary directed the affairs of the university system by eliciting their cooperation while the Commissioner had the authority to demand it.

However, all those interviewed believed that information they had provided, at least to some degree, might have been dulled by memory (some of those interviewed had been away from higher education for as long as seven years) and colored by personal opinion and frame of reference. The changes they described also could have been the result of growth in staff or differences in personalities and management styles of the administrators rather than change in organizational structure. Finally, most of these men were familiar only with the early phase of the commissioner system and so described practices not necessarily adhered to after 1978. Still, many observations were made by these men too many times and with too much intensity that it was impossible not to draw certain conclusions.
Establishing the Position of Commissioner

When talking about the first few years of the commissioner system, most of those interviewed used words such as "evolving," "growing," and "learning." This was a period of transition and those involved in it recognized that some of what they considered to be the initial failings of the plan were due primarily to uncertainty and inexperience.

Yet another term, "empire building," if not always used was certainly implied by a large majority of those questioned. Many felt that the Commissioner and some felt that even the board spent the first part of the new administration trying to establish themselves as head of the university system, especially in the eyes of the legislature. In the estimation of some, this objective was pursued at the expense of the system and its units.

At the same time there was a feeling that a great deal of ego was involved in the effort, not only the personal ego of the man holding the position of commissioner but the ego of the board members who were trying to upgrade the status of that position. Some regents, too, shared this point of view. In fact, they said that too much money and attention were given to the Commissioner's office for what it was actually accomplishing for the system. They also expressed concern over what it was actually accomplishing for the system. They also expressed concern over what one called the growing bureaucracy of the office. A president, however, captured the feelings of the majority of interviewees when he said that the flamboyance of the office in its pursuit of recognition was drawing attention to the man who governed the system.
rather than to the system which was also struggling for public recognition.

While it was important that the authority of the Commissioner be recognized, the effort it took to achieve such a response caused both the Commissioner and the board to lose sight of their original purpose—instilling better administration of higher education in the state. In order to improve administration of the university system, a strong commissioner was established. Attention, money, and manpower were provided to ensure that his new authority would be duly recognized. However, the Commissioner and the board became so preoccupied with achieving and preserving such recognition, and even with attaining more, that they neglected the affairs of the system and so disregarded the constitutional goal of bettering the state's university system.

Nevertheless, the presidents, the regents, and the administrative staff admitted that changes in the governance of the system did occur. All agreed that the Commissioner attempted and often succeeded in controlling, managing, supervising, and coordinating the affairs of the university system to a greater degree than did his predecessor.

Changes in Academic Affairs

Under the old administrative arrangement all academic matters were brought to the Council of Presidents by the Executive Secretary where they were thoroughly discussed and voted upon. The Executive Secretary, making no recommendations of his own and rarely modifying those made by the presidents, forwarded all proposals to the board. In most cases, an individual president would then explain and sometimes
defend the stand taken by the council. In this way the presidents made recommendations directly to the board. The Executive Secretary merely acted as their moderator and handled the paperwork of the council.

This system changed drastically when the Commissioner assumed his responsibilities in 1973. According to the regents and administrative officials, because of the first commissioner's academic training, his large staff and new constitutional status, the board placed a great deal of confidence in his ability to direct the academic affairs of the university system and relied upon him to do just that. He was expected to become personally involved in the academic concerns of the system and to make his own suggestions to the board. Thus, the Council of Presidents no longer made recommendations directly to the board; but instead acted as an advisory board to the Commissioner, who, in the presidents' estimation, had and felt no obligation to listen to them when making his recommendations.

The Commissioner also set the agenda for the council meetings (instead of the council members and the executive secretary, as had been the case) which allowed him, according to several presidents, to decide what academic issues deserved the board's attention. The presidents felt that these new arrangements not only contributed to the Commissioner's new ability to recommend and even formulate academic policy, but also allowed him to closely monitor and at times to disregard the decisions of the presidents.

As described by the presidents, these changes in procedure did
not greatly deviate from board policy and did fulfill the intent of
the constitution that the Commissioner have a more active role in the
affairs of the university system. The Commissioner was accorded the
opportunity to express his own viewpoint and to act as an agent of
communication between the board and the presidents.

Yet the Commissioner's new responsibilities produced a few prob­lems unforeseen by the delegate$ to the Constitutional Convention. The
presidents regarded the Commissioner's activities as still another
means of ensuring their recognition of a compliance with his authority.
More importantly, they saw their own authority diminishing as a
result of the Commissioner's actions. They no longer dealt directly
with the board. They said their recommendations did not carry the
weight they had previously enjoyed, and their ability to deal with
important academic issues had been seriously jeopardized.

The presidents recognized the need for a strong commis­
sioner, but virtually all those interviewed found fault with the means
used to achieve that strength. If the maneuvering of the Commissioner
had not seemed such obvious bids for public attention and internal
obedience, the presidents would not have felt resentment in yielding
some of their authority to the Commissioner's office. But because they
felt their power had been curtailed solely to strengthen the position
of commissioner, regardless of the effect it would have on the system's
academic programs, they became embittered toward the entire arrangement.

The Commissioner's new authority to oversee presidential decisions
regarding academics and to formulate and recommend changes in academic
policy throughout the system did increase his ability to coordinate, manage, and control higher education in the state. However, the manner in which this increase in the Commissioner's power was implemented created an atmosphere so hostile to the techniques of the new administration that any improvement in the government of the university system was negated.

Changes in Financial Affairs

The purpose of the new financial process that was introduced system-wide shortly after the Commissioner took office was to clarify, centralize, and coordinate the budgetary procedures of all the units. Yet again these objectives were not fully realized because of the means that were used to achieve them.

The presidents felt that budget preparation, while not changing dramatically, did gravitate from their supervision and management to that of the Commissioner. The guidelines to be followed when preparing a unit's budget were drawn up by the Commissioner just as they had been by the Executive Secretary. However, the influence the presidents previously had in their establishment was felt to have been considerably reduced and revision was no longer permitted. Under the Executive Secretary, suggestions offered by the presidents were always considered and changes in the guidelines were frequent. Few of those interviewed said the commissioner was more involved in budget preparation than was the Executive Secretary, but they did see him as being more adamant in exercising his authority over the process.

While politically this arrangement lacked the flexibility to react
to changes in the legislature and in public opinion, administratively
the new system with its clear lines of responsibility and its dis­
couragement of constant revision was an improvement. In fact, this
new procedure provided the very clarity and centralization desired
by the Commissioner and those responsible for devising the new admin­
istrative arrangement. The flexibility it lacked was partially com­
pensated for by the exactness of its stipulations and by the visibility
of those responsible for issuing them. Those in and out of the system
knew at all times with whom and what they were working.

While this procedural change drew some criticism for its rigidity,
most felt that the greatest failure in the new budgetary policy lay in
how the budget was presented to the state legislature. Under the
Executive Secretary each president individually or in small groups
personally defended his institution's budget. In addition, the pres­
idents testified at numerous committee hearings and spent many hours
informally lobbying the legislators. The Executive Secretary played
a very minor role in this endeavor.

In an attempt to coordinate the individual efforts of the presidents
and to keep internal bickering from spilling over to legislative hearings
and committee meetings, the Commissioner alone presented the university
system's budget to the legislature. In fact, during the first legis­
 lative session of the commissioner's administration, the presidents
were told unequivocally to stay away from Helena and take no part what­
ever in the system's lobbying efforts unless asked to do so by the
legislature.
According to the presidents, this new lobbying method was a failure. The Commissioner, seeing that university funds were being drastically cut, revised his earlier edict and asked one of the presidents to go to Helena to lobby the legislature personally. While the president's efforts were far more successful than those of the Commissioner, (who, it was felt, had antagonized the legislature), many of those interviewed thought that the Commissioner should have held firm to his original plan even if it had meant a temporary loss of funds for the system.

The method of budget presentation that was first proposed by the Commissioner would have demonstrated to the legislature that a genuine effort was being made to centralize and coordinate the budgetary process as had been intended by the constitution and later mandated by regent policy. However, the legislature instead witnessed a return to the status quo after only one attempt was made in accordance with the new plan.

Such a complete reversal of policy not only jeopardized the credibility of the entire university system but seriously weakened the image of a strong commissioner. Had the Commissioner stayed with his original plan, the legislature as well as the public would have been forced to acknowledge a change in the administration of higher education in the state. But because the means of ensuring such recognition were sacrificed for a temporary gain, no actual change in the Commissioner's ability to either coordinate or supervise the presentation of the budget was made.
By formulating and then issuing his directives for preparing the budget, the Commissioner had succeeded in increasing his ability to manage and control higher education. But, because he did not adhere to his original intention of limiting the activities of the presidents and presenting the budget directly to the legislature himself, his supervision over the coordination of the budget presentation did not differ greatly from that of the executive secretary. Of equal importance, his authority as commissioner which was being amassed with such cost to the energy and direction of the system was also affected.

Changes in Administrative Affairs

In spite of the setback suffered to the Commissioner's prestige during the legislative session, his authority and power continued to grow within the university system. His increase in responsibility, however, was at the expense of other components of the administration.

Under the previous system the Executive Secretary was directly responsible to the Board of Regents. Yet according to those questioned, he worked on a more or less equal basis with the presidents who were also responsible to the board. It was felt that he used his position as advisor to the presidents to carry out the will of the board while trying also to coordinate the individual objectives of the presidents.

Under this setup, the presidents felt that they had quite a bit of influence in the system's decision-making process. One regent even claimed that they "practically ran the whole show." While not totally agreeing with such sentiments, the presidents were still
satisfied with the arrangement. They felt that in such a situation "you could get hung, but at least you could braid the rope."

The Commissioner, however, while still responsible to the board, shared little of his authority with the presidents. He conducted the board meetings, presided over the Council of Presidents, and made decisions for the system with little outside consultation. The presidents were no longer responsible to the board, but instead reported to the Commissioner. According to the presidents this resulted in a loss of personal contact between the presidents and board members. "There was no longer the close personal relationships with presidents in or out of board meetings, but a much more formal relationship through the commissioner." As the presidents saw it, a new layer of authority had been added to the administrative hierarchy.

This expansion in the chain of command interrupted the normal flow of communication between the presidents and the members of the board and caused a number of problems for both. It was the intention of the board that, in order to coordinate better the operation of the various units of the system, the Commissioner would serve as both the supervisor of the presidents and their agent of communication with the board. However, once such a system was established the board lost its direct contact with the presidents who could best provide it with the estimates, figures and explanations necessary for governing the units. In turn, the presidents lost their main avenue for expressing their needs and the needs of their institutions to those who could best assist them in pursuing their objectives. Both had to rely on the
interpretations of a third party, the Commissioner, to communicate about that which before they could have spoken directly and with much more clarity.

In addition, the new arrangement, according to the presidents, had a great effect on the Council of Presidents. Made up of six unit presidents and the executive officer of the board, the council traditionally has convened before the board. While acknowledging the influence the council carried, the presidents maintained that it was subservient to the board and needed regent approval before taking any action. Each president saw the council's importance decline when the Commissioner took over its administration.

When the Executive Secretary served as its administrative officer, the council debated, often at great length, each item brought before it, voted on the position to be taken, and then recorded the results. It was felt by most that the Commissioner regarded the council's functions merely as "ritualistic exercises." Immediately upon taking his office, they saw deliberate changes being made in the structure of the council and its activities. Instead of rotating the chair among the council members as was the previous practice, the Commissioner assumed permanent chairmanship. Votes were no longer recorded or even taken by the council; it was required only to reach a consensus. Though discussion was allowed it was not the type nor the length formerly engaged in by the council. The presidents believed that the Commissioner was neither interested in nor receptive to their ideas. They felt that they were being presented with questions that had already
been answered, either by the Commissioner himself or by the board working through the Commissioner. Though they did not agree as to which was the case, they did agree that, in the words of one president, they were often "handed a fait accompli."

The presidents maintained that the Commissioner was using his position in the council to solidify his personal ascendancy over them. The first meeting the presidents had with the Commissioner was remembered by most as a terse affair in which they were told in very precise language that they would abide by what he felt was best for the system and would put their own considerations aside. One president noted that as a result of this edict and its manner of delivery there were very few productive meetings between the presidents and the Commissioner.

The demise of the Council of Presidents closed yet another channel of communication previously available to the presidents. They no longer had the opportunity to discuss among themselves their common concerns or to share ideas on how to best resolve various administrative problems. Instead the issues of higher education were raised, discussed, and resolved without their knowledge or participation.

This reduction in the presidents' influence was another step in providing for a strong commissioner as well as for a more centralized and orderly method of governing the system. It eliminated the bargaining, maneuvering, and the internal bickering that occurred when the presidents were controlling the system. It increased the ability of the Commissioner to supervise, manage, control, and coordinate higher education
in the state. He was able on his own initiative to issue directives and to see they were carried out, to formulate and ensure the implementation of his own policies, to recommend and even institute change anywhere within the system, and to oversee totally the activities and decisions of the individual presidents.

Such a reorganization in the communication system and in the authority of the administrative hierarchy was not only expected and in accordance with the implementation of a more centralized governing structure; it followed precisely the guidelines set down by the board in their Policy and Procedures manual. Yet the presidents saw that the new plan broke down valuable communication networks and virtually destroyed most of the informal procedures and arrangements which had been providing the university system with many innovative and successful methods for coping with the administrative needs of higher education.

When the presidents could no longer communicate directly with the board or work with its executive officer on a more or less equal basis, the cohesiveness of the system was said to have fallen apart. Besides being the executive officer of their respective institutions, the presidents constituted an important informal group within the administrative structure. Had they been allowed to participate in the plans for centralization, had they been thought of as advisors to the Commissioner rather than as mere intruders on his time, and had they been able to retain some of their former workpatterns and relationships, the changes that still would have taken place would have been more acceptable to the presidents and so better implemented. Because the presidents were
ignored and the arrangements to which they had always adhered so lightly dismissed, the resulting administration, though centralized, was regimented, devoid of innovation, and held together by fear of reprisal. Again, the goal attempted in this case, that of centralizing the authority of the system, was a reasonable one, but the means used to achieve it were poorly developed and damaging to the entire plan.

Because of this constant pattern of pursuing the right ends with the wrong means, the change made in the administration of higher education produced neither the structure intended by the constitution nor kept intact the pattern that was followed under the Executive Secretary. Any evaluation of the effectiveness of the new administration should undoubtedly be a mixed one.

**Evaluation of the Changes Made in the Office of the Commissioner of Higher Education**

The changes in the Commissioner's office were intended to strengthen that office, that is, to increase the Commissioner's ability to manage, supervise, control, and coordinate higher education in the state. This objective was realized by instituting new methods of operation within the administration that brought a sense of order and coordination to a highly dispersed and complex system. Authority was centralized, horsetrading among the presidents eliminated, and clear patterns of responsibility, behavior and communication implemented. In addition, the budgetary process was clarified and the opportunities for policy revision and unexpected change were reduced.

Yet the means used to achieve these changes not only jeopardized
the very credibility of the new administration but also alienated essential personnel, destroyed valuable work patterns and relationships, and severely reduced innovation and spontaneity system-wide. A majority of these problems could have been eliminated and the benefits resulting from the new procedures felt to their fullest if a different style of management had been utilized by the first commissioner. The people who were most affected by these changes, the presidents of the six units, were highly qualified professionals who resented how the changes were made and how they were personally and professionally affected by them.

The Commissioner was variously described by the presidents as a "super president," a "supreme president," and a "little dictator" who either on behalf of the board or of his own accord was there to "ride herd on the presidents" and "to make heads roll." Though not all spoke in such harsh terms, the vast majority of the presidents saw themselves relegated to being vice presidents whose main responsibilities were to abide by the dictates of the Commissioner. According to the presidents, the Commissioner, thinking of himself as their "boss," assumed what one president called an "undue amount of authority" and to what another referred to as a license "to dabble in any affair he pleased." A regent noted that he was not sure if the Commissioner was delegated his vast authority or if he merely assumed it.

Of more significance to most presidents was their belief that the Commissioner's administration reduced the autonomy of their institutions as well as their ability to govern freely those institutions.
Still, they did not object to having a strong executive officer to coordinate their efforts and to carry out the will of the board. They did, however, resent what they felt to be the Commissioner's disregard for the authority they held within their own institutions. Regardless of the ego involved, the presidents were most familiar with their own college or university, and for the good of that school they should have been allowed some discretion in its internal governance. But this was not happening under the Commissioner to anywhere near the extent that it did under the Executive Secretary. Even a regent remarked that it was the responsibility of the board to select the best possible administrator for a unit presidency and then the board and the Commissioner should leave him alone.

Evaluation of the Changes Made in the State Board of Regents

The behavior of the Commissioner was not the only source of dissatisfaction with the new system. The Board of Regents was criticized even by its former members, not so much for its misuse of authority but rather for its failure to assume its proper amount of authority. One board member, who felt that the new constitution allowed for greater regent involvement in the affairs of higher education, admitted that there was actually very little change made in the activities undertaken by the board. As far as he was concerned the regents, despite their new constitutional status, were still sharing their control of higher education with other state offices. Of the two regents interviewed, neither saw any real difference between the old board of education and the new Board of Regents.
While legally the Regents had a great deal more power than did the Board of Education, it actually exercised very little more authority than had the old board. Article X, Section 9 of the 1972 Constitution made the Board of Regents an autonomous body, more independent than any other state board or agency, and certainly more independent than the Board of Education. For the Regents to achieve their full constitutional status they would have had to challenge in the courts any executive or legislative intrusion into their authority. Many presidents cited the example of Michigan's Board of Regents, perhaps the most autonomous board in the nation, going to court year after year to establish its control over the state's system of higher education. However, Montana's Regents were never willing to do this, especially in regards to suing the state legislature.

According to the new constitution, the legislature was not allowed to control higher education in the state or to involve itself in the details of its administration. Yet at times the Regents allowed the legislature to do just that by refusing to challenge legislative encroachments upon their jurisdiction. This was most apparent in cases involving the legislature's use of line-itemization to control the activities of the system in ways not otherwise available to it. The Regents justified such acquiescence by reserving in each case the right to later fall back on their constitutional prerogative. Still the presidents, despite the decision of the Judge case, could only recall one instance when the board actually exercised this right.

In the final analysis, therefore, little concrete change was made
in the authority exercised by the Board of Regents. The changes that did occur happened as a result of the reorganization of the office of the board's executive officer not as a result of Article X, Section 9 of the 1972 Constitution.
CHAPTER VII

SUMMARY AND CONCLUSION

In 1973 a new constitution for the state of Montana went into effect. Its purpose as far as higher education in the state was concerned was to strengthen the administration of the university system. To do this required increasing the ability of the executive officer of the system to supervise, manage, coordinate, and control higher education within the state. It also necessitated granting additional authority and responsibility to the state board in charge of overseeing the activities of the executive officer and of the system he directed.

The transcripts of the Constitutional Convention as well as the majority report of the Committee on Public Lands and Education showed that the delegates to the convention wanted a strong autonomous board that would deal solely with the affairs of the university system and would employ an equally strong executive officer to coordinate the system's disparate units. Above all they wanted a board that would not be dependent upon any other state body, whether it was political or administrative. Following ratification of the constitution it was felt such an arrangement had been achieved. The Montana State Board of Regents had been established and the position of Commissioner of Higher Education was instituted to manage its affairs.

The decisions of the Montana Supreme Court have indicated that, to some degree, the authority of the new board had been expanded. In
addition, an examination of board policy revealed that the duties of the Commissioner were both formalized and clarified and his responsibilities and authority have been greatly augmented.

However, it is clear, despite what appeared on paper, that the original intention of the convention has not been realized. Legislation passed after the constitution went into effect differed little from that which was enacted before its ratification. In effect, the legislature was refusing to acknowledge the new authority and independence of the board and was continuing to concern itself with university matters over which it no longer had any jurisdiction.

The board, for its part, was accused of not trying to attain the independence and authority intended for it by the framers of the constitution. The Commissioner, on the other hand, was criticized for assuming too much authority and for exercising it with little regard for the effect his actions would have on the administration of higher education as a whole. The Commissioner's ability to supervise, manage, coordinate, and control the academic, financial and administrative affairs of the system was definitely increased by Article X of the new constitution. In a number of ways such an extension of the Commissioner's powers benefited the system's administrative structure. However, the means used to achieve such an increase also impaired the ability of the system to function as a cohesive and smooth running unit of government.

In the final analysis, Article X of the constitution did at least partially achieve its goal. The groundwork was laid for a strong and independent Board of Regents, and authority and clarity pertaining to
the responsibilities and duties of the Commissioner were increased. Yet changes in law, whether they be constitutional or administrative if they are to benefit the existing structure, must be fully implemented and done so with an eye to how they will affect the system involved.

Because the Regents did not utilize their new authority to the fullest possible extent and because the Commissioner ignored established behavior patterns and work relationships in implementing the new powers of his office, the administrative structure that emerged for the state's university system was not the one intended by the 1972 Constitution. Still, the basis remains for instituting the changes envisioned in 1972. All that is necessary, it would seem, is a board willing to exert its proper authority and independence and a commissioner able to administer the new system in a manner that elicits the cooperation of other administrators within the system while ensuring recognition and respect for the authority vested in his office.
Books, Articles, and Dissertations


Government Documents


Government Publications


George Peabody College for Teachers; Division of Surveys and Field Services. Public Schools in Montana. Helena, 1958.


Montana's Governor's Committee on Reorganization and Economics. Helena, January 4, 1943.


Decisions of the Montana Supreme Court

Board of Regents v Judge 168 Montana 433 P2n 1323 (1975).
State v Brannon 86 Montana 200, 208, 283 P202 (1929).
State ex rel Keeney v Ayers 108 Montana 547 92 P2d 306 (1939).
State ex rel Veeder v State Board of Education 97 Montana 121, 133 33 P2d 516 (1934).
Interviews

President Emeritus Northern Montana College

Fred DeMoney - August 19, 1981
President Montana College of Mineral Science and Technology

John French - September 1, 1981
Former member of the State Board of Education and
Board of Regents

Stanley Haywood - Written correspondence on September 16, 1981
Former President Eastern Montana College

T. T. Heberly - August 31, 1981
Former member of the State Board of Education and Board
of Regents

William Lannon - June 8, 1981 and August 26, 1981
Director of Special Projects and Community College Coordinator
under the Executive Secretary and the Commissioner of Higher
Education

Carl McIntosh - June 8, 1981
Former President Montana State University

Edward Nelson - June 8, 1981 and August 26, 1981
Former Executive Secretary

Robert Pantzer - July 31, 1981
President Emeritus University of Montana

James Short - August 25, 1981
President Emeritus Western Montana College