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** 2 ** 1 Constitutional Convention of Montana.

First Day Jany 14th 1884

The Constitutional Convention met at their hall over Paynter & Comstock's store, at noon yesterday.

The convention was called to order by Hon. W. J. McCormick, who announced that under the resolution adopted by the last Legislature, while a time was provided for the convening of this body, it seemed that no one had been designated to call it to order, and that as he had some experience in such matters, he had, at the suggestion of members, assumed the responsibility himself.

The first business in order was the selection of temporary officers, which resulted as follows:

The Hon. S. W. Langhorne nominated as temporary president of the convention the Hon. W. J. McCormick, of Missoula, and put the motion, which was carried unanimously.

The president then stated that the next thing in order would be the election of a temporary secretary.

Hon. Cornelius Hedges nominated James B. Wells, who, upon motion, was elected.²

Hon. W. Y. Pemberton nominated temporary stenographer W. I. Lippincott, who upon motion was elected

Samuel Alexander was then nominated and elected temporary sergeant-at-arms.

T. C. Collins then put in nomination Stonewall Roe for temporary page, who was elected.

Hon James E. Calloway nominated for temporary fireman John Porter, who was elected.

Hon. S. W. Langhorne moved the appointment of a committee of five on credentials.

W. W. Dixon moved to amend by making the committee on credentials to consist of one from each county. The amendment was accepted and agreed to.³

And the Temporary President appointed the following Committee: ** 3 **

¹ This page is the image of a folder labeled Proceedings. 1st day, Jan. 14, 1884.

² This indented set of paragraphs is from a news paper clipping in the document.

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Beaverhead county – Robert B. Smith.
Choteau county – T. E. Collins.
Custer county – Wm. Van Gasken.
Dawson county – J. F. Maloney.
Deer Lodge county – E. B. Waterbury.
Gallatin county – S. W. Langhorne.
Jefferson county – N. Merriman.
Lewis and Clarke county – J. K. Toole.
Madison county – H. S. Howell.
Meagher county – James Fergus.
Missoula county – W. J. Stephens.
Silver Bow County – W. Y. Pemberton
Yellowstone county – F. L. Greene.

As there was some dissatisfaction with the room provided for the convention to hold its sessions in, a committee of five was appointed to confer with the Territorial Secretary and ascertain if a larger hall could not be provided. (Committee rooms had already been provided at the Secretary's office.)⁴

– and on motion of Hon. George O. Eaton, the following Committee of five was appointed, with the Chairman as President: R.P. Vivion, Cornelius Hedges, James H. Mills and T. C. Power.

An adjournment was then taken until 2 p. m.

Afternoon Session.

The convention was called to order at 2 p. m., after which the Committee on Credentials reported the following member entitled to seats in the convention:

Beaverhead County – Joseph A. Brown and Robert B. Smith
Choteau County – T. E. Collins and W. H. Hunt.
Custer County – C. W. Savage, Wm. Van Gasken and S. R. Douglass.
Dawson County – J. F. Malony.
Deer Lodge County – J. C. Robinson, E. B. Waterbury and Joaquin Abascal.
Gallatin County – S. W. Langhorne, R. P. Vivion, G. O. Eaton, F. D. Pease and Edward F. Ferris
Jefferson County – E. McSorley and N. Merriman.
Lewis and Clarke County – Matt. Carroll, J. K. Toole, C. Hedges, and Geo. Steell.
Madison County – H. S. Howell and J. E. Callaway.
Missoula County – W. J. McCormick, W. J. Stephens, J. B. Catlin and R. A. Eddy.
Meagher County – J. F. McClintock, James Fergus and W. F. Haas.

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Silver Bow county – Thos. L. Napton, W. Y. Pemberton, W. A. Clark, Marcus Daly, J. C. Thornton, and Francis Medhurst.

Yellowstone county – F. M. Proctor and F. L. Greene.

First Judicial District – Walter Cooper and A. F. Burleigh

Second Judicial District – W. W. Dixon and James H. Mill.

Third Judicial District – W. B. Hundley and T. C. Power.

The report was adopted.⁵

**** 4 **** On motion a

Committee, consisting of Hedges, Hundley and Burleigh was then appointed to wait upon the Chief Justice and secure his attendance to administer the oath to members.

In response to an inquiry by Merriman as to what had been accomplished by the committee appointed to see about securing a better room in which to meet, a communication was received from the Secretary, announcing that no other place was at present available.

The Chief Justice having made his appearance, the members were called up to the President's chair and were sworn in, after which roll was called by counties and the members subscribed to the oath.

On motion of Hundley, a vote of thanks was tendered by the Convention to Hon. D. S. Wade for administering the oath of office to the members.

Considerable of a dispute arose as to the proper manner for selecting permanent officers, some members maintaining that a committee should select the officers, others that the convention as a whole was capable of selecting its own officers.

Callaway moved that a committee of five be appointed to provide for and designate the permanent officers of the Convention.

Mr. Stevens moved to restrict the motion to only the President and Secretary of the Convention.

Pemberton moved to lay the amendment on the table.

Vivion moved to postpone the motion and amendment indefinitely. Agreed to.

Merriman moved to proceed at once to the permanent organization of the Convention. Without action the Convention adjourned until 7 o'clock this evening.

Evening Session.

⁵ This indented set of paragraphs is from a news paper clipping in the document.

The session at 7 o'clock was called to order by W. J. McCormick, temporary president, who said the first business in order would be the election of a permanent president of the Convention.

Mr. Dixon of ~~Deer Lodge~~ Second Judicial District, placed in nomination W. A. Clark, of Silver Bow county.

Hedges, of Lewis and Clark, nominated James H. Mills, of Deer Lodge.

Mills arose and addressed the convention, stating that he was not a candidate and wished his name withdrawn.

Without any action being taken, Proctor, of Yellowstone, moved that the members vote viva voce when their names are called. Agreed to.

Before voting commenced Mills asked that his name be taken from the list of candidates.

When their names were called Merriman, of Jefferson, and other members were excused from voting.

A ballot being taken, W. A. Clark received 25 votes and J. H. Mills 4 votes.

Clark was declared elected, and Langhorne and Mills were appointed to conduct President Clark to the chair. ** 5 **

On retiring, Mr. McCormick, temporary chairman, said:

Gentlemen of the Convention: It becomes my duty to present to you this evening the permanent chairman of this convention. I ask for him in this new and, to some extent, untried position, your earnest support and co-operation. Without that, the duties resting upon him may be such as he may have difficulty in discharging, but with your support and co-operation the business of the convention will be greatly facilitated. I thank you for the honor you have conferred upon me by electing me to preside over you temporarily, and I now introduce to you Hon. William A. Clark, President of this Convention.

Mr. Clark (to the retiring president):

I heartily thank you for your introduction in my behalf.

Gentlemen of the Convention: – For this evidence of your confidence and esteem in selecting me to preside over your deliberations, I am truly grateful, and you have my most profound thanks. In the matter of the selection of your president, I would have cheerfully yielded to one of more extended experience, but with your indulgence and co-operation, upon which I confidently rely, I will discharge the duties of the office

faithfully and impartially. I recognize in this action that there are involved less of personal considerations than a generous inclination on the part of the people who dwell on the east side of the Rocky Mountains to tender a high compliment to those whose lot is cast upon the western slope. I can assure you that your magnanimity will be duly appreciated. Their interests are inseparably connected with yours in all that pertains to the advancement and development of Montana, and the building up of a great commonwealth astride yonder mountain chain. I see before me as members of this convention a great number of gentlemen who with me have watched the development of the Territory for more than a score of years. We have seen order grow out of chaos, savagery yield to civilization, the bull team give way to the freight train, and the stage coach to the palace car. Amongst those informed as to the extent of the resources and capabilities of this Territory, I would not excite a suspicion of unfairness or undue partiality in declaring that her boundaries include a greater extent of fertile valley and prolific mountains than any of the Territorial sisterhood; and it must be a source of intense pride and gratification to each member of this convention to know that he has been called upon to assist in the formation of a constitution for her government when she shall assume the robes of sisterhood; but in the exercise of this privilege we must not be unmindful that we have a solemn duty to perform that should challenge our best energies to create an instrument acceptable to the people. Such a Constitution as will guarantee equal rights and privileges to all classes and conditions of men. Such a constitution as will foster and protect alike all industries and occupations. Such a Constitution as will encourage capital and labor to go hand in hand like foster sisters, for the promotion of the general welfare of all. A Constitution as will be untainted with the least vestige of partisanship, sectarianism, or sectionalism. Then let us enter upon our duties with unswerving fidelity to the noble trust imposed upon us, and with a unity of purpose to lay broad and deep the foundations of State, so when our labors shall have ended, and Montana, a bright star, shall have taken her place in the galaxy of States, we may point with pride to the structure and secure the lasting commendation and gratitude of our posterity. [Applause.]⁶

**** 6 **** The President announced that the first business would be the election of a permanent secretary, whereupon Hundley, of Lewis and Clarke, nominated Paul L. Van Cleave, of Yellowstone, and there being no other nomination [*sic*], on motion of McCormick, of Missoula, the election of Van Cleave was made by acclamation. Van Cleave not being present to take his position, on motion of Proctor, James B. Wells was authorized to act secretary pro tem.

Toole, of Lewis and Clarke, offered a resolution to provide for the following subordinate officers. One assistant secretary, one engrossing clerk, one sergeant at arms, one fireman, two stenographers, two pages, and a clerk each to the standing committees.

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The resolution was adopted, and the matter of per diem pay of these officers was, on motion of Dixon, referred to a committee of five appointed by the President as follows: Dixon, Collins, Carroll, Vivion, and Maloney.

Merriman moved to print 100 copies of the legislative joint resolution providing for a Constitutional Convention, and 1,000 slips of roll call.

The resolution was amended, so as to read that the Secretary of the Territory be requested to furnish the Convention with 45 copies of the pamphlet laws of the 13th session of the Montana Legislative Assembly, which was agreed to.

Burleigh, of the First Judicial District, offered a resolution to establish the following standing committees:

- 1 – On Rules.
- 2 - On elections and qualifications.
- 3 – On bill of rights.
- 4 – Election franchise.
- 5 – Legislative department.
- 6 – Executive department.
- 7 – Judicial department.
- 8 – Distribution of powers; pardons and militia.
- 9 – Education.
- 10 – State institutions and public buildings
- 11 – Cities, towns and counties.
- 12 – Corporations.
- 13 – Revenue and taxation.
- 14 – Water and water rights.
- 15 – State and municipal indebtedness.
- 19 [sic] – Land and homestead exemptions, and amendments to the constitution.
- 17 – Miscellaneous subjects and boundary.
- 18 – Schedule.

After some discussion the resolution was referred to a committee of one from each county, the same to be appointed by the President.

Mills, of Deer Lodge, moved that the Secretary of the Territory be requested to have a chronometer placed in the hall, adjusted to the true meridian time of Helena, and that the meetings of this Convention shall hereafter be in accordance with said time.

On motion of Burleigh, a committee of five was appointed on rules. The chair named Burleigh, McCormick, Mills and Langhorne.⁷

A resolution extending the privileges of the floor to the Governor and Ex Governor of the [indiscernible word] and the Chief Justice and Judges of the Territory and U.S. Marshal and on motion of Callaway the resolution was adopted, and the secretary directed to inform them. ** 7 **

McCormick, from the committee to see about securing a larger hall in which to meet reported that they had been utterly unable to obtain a better hall – and asked that the committee be discharged.

However, on motion of Dixon, it was decided to retain the committee in hope that they would yet be able to find a more suitable hall. The convention then adjourned until 11 o'clock this morning.⁸

** 8 **⁹

** 9 ** Second day – Tuesday Jany 10th 1884

Convention called to order at eleven oclock, President Clark in the Chair. Roll Call- All members present

Minutes of yesterday read.

On motion of Maloney reading of that portion of the minutes relating to the swearing of members was dispensed with.

On motion of Proctor the minutes were corrected in the matter of the Secretary pro. tem acting until tomorrow and was changed to read, the Secretary pro tem shall act until the arrival and qualification of the Secretary.

On motion of Burleigh the word “members” was corrected to “members” as it appears in the resolution creating committees and on motion of Green “1883” was changed to “1884” in the minutes

McCormick:

Mr. President I move that the vote by which the resolution introduced yesterday by Mr. Burleigh and referred to a committee of ** 10 ** thirteen be reconsidered. I will state my reasons for the motion I now make

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The members of the Committees of which the whole of the Convention is to be referred is a matter which really belongs to the committee on rules. There was a committee of 5 on rules apportioned last evening. After investigating we find in the States of California, New York and Nevada, that the committees of which the convention shall be composed were determined by the Committee on rules. It became a part of their duty. The precedents go a little further and provide the number of members who shall constitute the Committees. I move therefore that the resolution be reconsidered and that the whole matter be referred to the committee of five which was apportioned by the chair last night and ask that the chair add to that committee two members.

Seconded and carried

** 11 ** Mr. Maloney –

Mr. President I move that a committee of three members be appointed on mileage

Seconded and carried

Mr. President =

the chair will add to the committee on rules Mr. Pemberton of Silber Bow and Mr. Hunt of Choteau

Pemberton =

Mr. President, I decline in favor of Judge Proctor of Yellowstone.

Mr President –

The chair will gladly make the changes. Add Mr. Proctor of Yellowstone, in place of Mr. Pemberton.

Mr President =

The chair will appoint on the committee on mileage

Mr. Maloney

Mr. Daly Committee on Mileage

Mr. Catlin

The committee to whom was referred the matter of officers reported as follows:

Mr President – Now ** 12 **

Committee to whom was referred the matter of the officers (in addition to President and Secretary) necessary for the Convention, and their confirmation, and the resolution introduced in

reference hereto, respectfully report the following resolution as a substitute for the resolution referred and recommend its adoption, to wit: –

Be it resolved and ordained by this Convention that besides a President and Secretary, the officers of the Convention shall be as follows, and they shall be entitled to receive for their services the compensation hereinafter enumerated, that is to say, One Assistant Secretary at Eight dollars per day, Three (3) clerks for general clerical work as directed by the president of the Convention (including committee work) at six dollars per day each. Two stenographers (who shall take and preserve full stenographic notes of all proceeding of the Convention and write out in long hand such portion thereof, as directed ** 13 ** Convention) at fifteen dollars per day each.

One sergeant at arms at seven dollars per day- One assistant sergeant at arms (who shall also be doorkeeper) at five dollars per day. One fireman at four dollars per day. Two pages at four dollars per day each. All of which is respectfully submitted.

Jany 15, 1884

W W Dixon, Chairman
Committee

Waterbury =

I move the report be received and adopted.

Seconded

McCormick –

It seems to me the report ought to include the compensation of President, and I move the report be referred back to the committee.

M Dixon =

I do not think the motion is in order – It was the intention of the committee to act upon such officers, as and left for the convention to elect – the committee considered ** 14 ** the proposition and decided that they had no power to fix the compensation of the President and Secretary

Hedges =

I move that the report be amended to provide for one reporter at \$20.00 per day

Stephens =

I support the gentleman as to the amount, and I have this to say in support of the amendment. I believe it is right for this Convention to pay a fair and reasonable price for its officers – While a class of our officers get \$7.00 a day each the reporter are fixed at \$15.00. Now sir, that covers the question of stenographic writing and also the question of transcribing it from short hand into long hand.

Proctor =

The motion to recommit, Mr President, is out of order

Mr President =

The point is well taken - ** 15 **

After some debate the question to recommit the ~~question~~ resolution back to the committee, with instructions to report compensation for all officers of the convention was first and carried –

The following resolution was offered

Resolved –

That the Secretary of the Territory be and is hereby requested to furnish to the Secretary of this Convention one thousand printed roll calls for the use of the Convention

Greene

On motion of McCormick the resolution was adopted –

The following resolution was offered by Burleigh

Be it resolved and ordained that in the opinion of this convention the office of president is one of honor and should not have a primary compensation. That the Compensation ** 16 ** of the secretary of this convention be and hereby is fixed at ten dollars per day.

On motion of McCormick the resolution was referred to the Committee on officers and Compensation

McCormick –

I move that the Convention do now adjourn until 3 oclock this afternoon.

Seconded

Hedges –

Have the committee on rules made any progress

McCormick –

Yes and ask for further time

Motion to adjourn until 3 oclock lost by a vote of 17 to 15 –

On motion of Langhorne the Convention adjourned until 2 oclock ** 17 **

The Convention reassembled at two oclock. President Clark in the chair

McCormick –

The committee on rules is not yet ready to report. We think we can conclude our report in twenty minutes and I move upon the Convention take a recess of twenty minutes –

Seconded and Carried

At twenty minutes past two oclock the convention was called to order, and the following communication from the Governor was received

“Executive Office
Helena, Jany 5 1884

James B. Wells Esq
Secretary pro tem of the Constitutional Convention

My Dear Sir,

I am in receipt of your communication of this date conveying the resolution adopted by the Convention, granting me the privilege of the floor during its ** 18 ** session and in reply, I beg you to thank the gentlemen of your honorable body for this courtesy extended to the Executive of the Territory.

Very resptly
J Schuyler Crosby
Governor

The committee on mileage reported as follows:

“Mr President –

Your committee on mileage

Burleigh	910
Cooper	200
Dixon	200
Mills	100

Hundley	----	
Power	----	
Browne		----
Smith	316	** 19 **
Collins		300
Hunt	300	
Edwards	----	
Savage	----	
Van Gasken	910	
Maloney	1066	
Robinson	----	
Waterbury	210	
Abascal		220
Vivion	200	
Hanson		----
Langhorne	200	
Pease	252	
McSorley	76	
Merriman	52	
Toole	----	
Carroll	----	
Hedges	----	
Steele	----	
Howell	250	
Calloway	250	
McClintock	250	
Fergus	450	
Haas	----	
Eddy	280	** 20 **
McCormick	280	
Clark	200	
Napton	200	
Daly	200	
Thornton	----	
Pemberton		
Proctor	500	
Eaton	420	
Douglass	910	

Maloney, Chairman

Mr Burleigh –

I see Mr Douglass has not come in. The report contains the name of Mr Edwards instead of Mr Douglass. Mr Douglass received the certificate of election and should appear on that report.

Mr Maloney –

I have changed that in the report and put Mr Douglass name on the bottom of the list.

Mr McCormick –

I move the adoption of the report. ** 21 **

Mr Langhorne –

Mr Hanson's name is reported and it should be Ferris. Mr. Ferris is absent but will be here in a day or two

Mr Maloney –

I will accept an amendment to have Mr Ferris' name substituted

Mr Langhorne –

I move that the report be recommitted to the Committee

Seconded and carried

The committee on officers and compensation reported on the resolution that had been recommitted, as follows

“Mr President

Your committee to whom was referred the matter of the officers (in addition to President and Secretary) necessary for the Convention, and their compensation, and the resolution introduced in reference thereto, respectfully report the following resolution as a substitute for the resolution referred and recommend its adoption – to wit: -

Be it resolved and ordained ** 22 ** that besides a president and Secretary the officers of the Convention shall be as follows, and they shall be entitled to receive for their services the compensation hereinafter mentioned that is to say, One assistant secretary at eight dollars per day Three clerks for general clerical work as directed by the President or the Convention (including Committee work) at six dollars per day each Two stenographers (who shall take and preserve full stenographic notes of all proceedings of the Convention, and write out in long hand such portion thereof as directed by the Convention at fifteen

dollars per day each. One sergeant at arms at seven dollars per day – One assistant sergeant at arms (who shall also be doorkeeper) at five dollars per day. One fireman at four dollars per day Two pages at four dollars per day each

All of which is respectfully submitted ** 23 **

Jany 15th 1884

W W Dixon

Chairman –

Mr President –

The above report having been referred back to your committee with instructions to report further as to the matter of compensation to be allowed to the President of the Convention, the Committee now respectfully report and recommend the adoption of the following resolution contained in their former report – to wit

Be it resolved and ordained by the Convention that the compensation of the President of the Convention shall be twelve dollars per day and the compensation of the Secretary shall be ten dollars per day. All of which is respectfully submitted –

W. W. Dixon

Chairman

Jany 15th 1884 ** 24 **

The President –

I thank the committee for their courtesy, but I must say that I cannot accept any compensation, as President of this Convention and I hope that portion of it will be amended and stricken out

[applause]

Mr Toole –

Mr President, I move to amend that portion of the report by striking out the clause fixing the compensation of the President

Seconded and carried amid great applause.

Mr Stephens –

With reference to that portion of the report relating to stenographers I would like state and will move, that the words from “day to day” be inserted after the word “convention” It says he shall “write out in long hand such portion hereof as designated by the convention”

Mr Proctor –

I rise to a point of order there is no motion before the house ** 25 **

Mr Stephens –

I am speaking of my amendment.

The President –

I believe the amendment was seconded

Mr Toole –

I second the amendment

Mr Stephens –

I have this to say –

Mr Dixon –

I suggest, Mr President, that the amendment be reduced to writing

Mr Stephens –

Very well –

Mr President =

While the amendment is being prepared I will state that the copies of the laws of the 13th legislative Assembly are here. But the Secretary has not the copies to give away, and they must be returned, and I suggest that as good care be taken of these copies as possible.

Mr Burleigh –

I believe the rules, when they shall have been presented will cover that point ** 26 **

Mr Stephens –

Mr President, I would like the privilege of reading my amendment as it appears, and as it is intended to appear in the body of the report.

“Two stenographers who shall take and preserve full stenographic notes of all proceedings of the Convention” here insert “from day to day” and also “write out in long hand from day to day, as this shall be instructed by the Convention. I wish to amend that portion. I am perfectly writing that the expenses here shall be reasonably paid for. At

first I thought twenty dollars a day was enough for reporters, and now I think fifteen is sufficient. All the advantage that we have from stenographic reporters is this, that some time in the future all this may be written out in books.

Mr Langhorne

I desire to rise to a point of order. I think the gentleman is out of order in arguing the amendment before ** 27 ** it is offered to the convention

The President –

The question is now on the amendment.

Mr. Stephens –

I wish to have it understood that we ought to derive some advantage from everything we do – Unless the proceedings of this Convention is written out from day to day not one of the members will derive a cents' worth of advantage from it. What do we have stenographers for? Simply for the purpose of having these proceeding written out and printed six months from now? What advantage is that to the members of this convention ~~If the proceedings are written out from day to day, so that the members can see what has been done, I am willing that the Territory should pay for it here today?~~ I am not willing for my part that the Territory shall pay a dollar for that. If it is necessary that the speeches made in the Convention today ** 28 ** be written out in a year from now. I am not willing to pay for it. I can get the proceedings of the Convention of California and learn as much from that as from this Convention. Now, sir, if we are going to pay this money out, it seems to me we should go a little further and have the proceedings written out, every day, into long hand and have it printed. If it is so written out and printed and laid on the desks of the members every morning I am satisfied, but I am not willing to pay two stenographers fifteen dollars a day, for keeping up a report that we can't see. Those are my ideas and I am done

The President –

The question is on the amendment, adding the words from day to day, the secretary will read the amendment

The Secretary –

“The amendment is that the resolution shall read as follows: ** 29 **

“Two stenographers who shall preserve full stenographic notes of all proceedings of the Convention from day to day and write out from day to day in long hand such portions thereof as is directed by the Convention

W. J. Stephens”

The President –

The question is

Mr Calloway –

Mr President I offer the following amendment.

The President –

Read the amendment

The Secretary –

Amend by striking out of report of Committee and insert as pay of several officers as follows

For		Secretary	\$8.00	per day
“	Assistant	“	6.00	“
“		Clerks	5.00	“
“		Pages	3.00	“
One		Stenographer	17.50	“
One	Clerk for	Stenographer	6.00	“

Callaway” ** 30 **

Mr Maloney -

Mr President I move that the amendment to the amendment be laid on the table

Mr Proctor –

I presume the gentleman does not understand the nature of that motion or he would not put it. If carried it will indefinitely dispose of the whole question.

The President –

The question is on the amendment. As many as are in favor of the amendment give their consent by saying aye

The question having been put was by the President declared lost

The President –

Now the question is on the amendment made by the gentleman from Missoula

The amendment having been put was by the President declared carried –

Mr Callaway –

Mr President my amendment was not included as an amendment to the amendment. My amendment ** 31 ** was read and voted on out of order. I was under the impression that the amendment made by the gentleman from Missoula was disposed of. I would now like to have a vote later on my amendment

The President –

The question is now on the amendment of the gentlemen from Madison County

Mr Hedges –

I move that the question be divided and submitted to the Convention

Seconded

Mr Vivian –

I hope the amendment will not prevail in its present shape The question as submitted now goes to the salaries of these officers and not as to whether we shall have the officers or not. I think it may be well enough to determine whether we are to have these officers in this Convention. The question as presented now by this amendment to the resolution assumes that we are to have the officers and fixes the ~~pay~~ compensation. The original resolution creates the question whether we shall first have these officers or not. After it is determined ** 32 ** whether we shall have them is time enough to fix the compensation. I am opposed to the amendment at this time, and I am opposed to it on the ground that it is the intention of the members to work as steadily as possible and produce good work at the same time.

Mr Dixon –

Mr President, It seems to me that the amendment offered by the gentleman from Madison goes to an extent that he doesn't anticipate. The original resolution provides for certain officers and fixes the compensation. Now this amendment is to strike out all of that resolution, as I understand it, and provides for the compensation of such officers named, but it omits the sergeant at arms and assistant. While I have no feeling about the matter, I think probably the amendment is misleading. What he desires to get at could be more readily effected by the course proposed by ** 33 ** Colonel Hedges, by taking the matter up separately

Mr Callaway –

Mr President, there perhaps may be some objection to the form of the ~~question~~ amendment, it was hastily drawn, but I can't agree with my friend from Silver Bow as to

the effect of the amendment. It simply serves to strike out of the report the salaries and per diem of the officers. The reply to the gentleman from Gallatin County, I will say that it does not affect the officers at all. Of course it is necessary to have these officers to facilitate the business of the Convention, and the only question is how much they shall receive. Now, sir, I conceive these officers, as the Committee have recommended, are necessary for the purpose of aiding us in the discharge of our duties, but I do think there is too much money paid for that assistance. I think we could get good officers to discharge the duties prescribed in the resolution now, eight dollars per day for a ** 34 ** clerk, six for assistant clerk, five for clerks of committees and three for pages, boys who can do the work; seventeen dollars and a half for stenographer and six for his clerk, who could write out in long hand – English as I call it, is sufficient. I tell you of the gentlemen will reflect a moment, if they will look over the proceedings of other Conventions, they will see at the rate they are going here today with this Convention if the proceedings are published and paid for as reported by the gentlemen making this report, it will be a very expensive operation indeed. In framing the Constitution of the State of Illinois in 1870 (and if I am not mistaken there were only two more officers in that Convention than are here presented) they had two stenographers, and they reported all the debates that arose in the Convention, and in the reports of those debates it cost the State of Illinois fifty-six thousand dollars. If this Convention today is ready ** 35 ** to assume a debt like that, I will go home. I think sir, the pay named in the amendment is a fair reasonable compensation. I am willing, I am ready, I am anxious to employ competent officers and pay them liberally, and I think that is enough for all. Those are my objections and I submit the matters and the reasons therefor

The President –

Are you ready for the question

Mr Callaway –

I ask for the ayes and noes

The Secretary –

Abascal

No

Mr Burleigh –

I request that the amendment be read before the ayes and noes are called

The amendment was read and the roll call resulted as follows: ** 36 **

Constitutional Convention

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		absent
Collins	/	
Carroll		/
Callaway	/	
Catlin	/	
Cooper		/
Dixon		/
Daly		/
Douglass	/	
Eaton	/	
Eddy		/
Ferris		absent
Fergus		/
Green		/
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley		/
Langhorne		/
Medhurst		
McCormick		/
McSorley	/	
Merriman	/	
Mills		/
Maloney		/
McClintock	/	
Napton		/
Pease	/	
Pemberton		/
Proctor		/
Powers	/	
Robinson		
Smith		/
Savage		
Steell		
Stephens		/

Toole /
~~Thornton~~
Vivion /
Van Gasken /
Waterbury /
Mr. President / ** 37 **

The President =

The vote resulted fifteen ayes and twenty two noes. The motion does not prevail

Mr Hedges –

I now renew my motion for a division of the question by items, and determine whether we have the officers and then fix the compensation

The President =

The question is on the motion by the gentleman from Lewis and Clarke to take up the report seriatim

The question being put was declared by the President carried

Mr Hedges –

I ~~move~~ ask for the reading of the first clause.

The President –

The secretary will read the first clause

The Secretary –

“Be it resolved and ordained by this Convention that besides a President and Secretary, the officers of the Convention shall be as follows: ** 38 ** and they shall be entitled to receive for their services the compensation herein after mentioned, that is to say –

One assistant secretary at eight dollars per day.”

Mr Hedges –

I move the adoption of that portion.

Seconded and carried

Mr Hedges –

Now I move that the compensation of that officer be fixed at six dollars

Seconded

Mr Maloney –

I move to amend the motion by making it eight dollars –

Seconded

Mr Hedges –

I renew my motion –

The President –

The question is upon the motion of the gentleman from Lewis and Clarke

After some debate in which Mr. Vivian and Toole objected to the motion and Mr Fergus favored it, a call by Mr Callaway for the ayes and ** 39 ** noes resulted as follows.

Constitutional Convention

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		
Collins		/
Carroll		/
Callaway	/	
Catlin	/	
Cooper	/	
Dixon		/
Daly		/
Douglass	/	
Eaton	/	
Eddy		/
Ferris		
Fergus	/	
Green		/
Hunt		/
Hedges	/	
Howell	/	
Haase		

Hundley	/
Langhorne	/
Medhurst	
McCormick	/
McSorley	/
Merriman	/
Mills	/
Maloney	/
McClintock	/
Napton	/
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Stell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

15 22 ** 40 **

The President =

Ayes fifteen Noes twenty two. The motion is lost

Mr Vivion –

Mr President, I move that the compensation of assistant secretary be fixed at eight dollars per day

Seconded and carried

The President =

Mr Secretary read the next clause

The Secretary –

“Three clerks for general clerical work as directed by the President or the Convention (including Committee work) at six dollars per day each”

Mr Langhorne –

Mr President, I move to amend by making it five dollars

Mr Hedges –

I submit that the order in which we should vote for this is whether or not we shall have the officer – I move that the number be two instead of three

The President –

Will the gentleman ** 41 ** withdraw his motion. (To Mr Langhorne)

Mr Langhorne =

Yes sir

The President –

The question is upon the motion to make the number of clerks two instead of three

Mr Burleigh

~~Mr Vivion –~~

~~—— Mr President – I desire to say that I hope the amendment~~

Mr Burleigh –

Mr President Insomuch as the report of the Committee on rules provides that there shall be no clerks employed except upon application of the Committees for which they are to work by the consent of the Convention, I think there is no necessity of providing for clerks in advance of the desires of the Committees. I therefore move as an amendment to the motion of the gentleman from Lewis and Clarke that that portion of the report providing for the employment of three clerks ** 42 ** be stricken out

Mr Hedges –

I accept the amendment

The President –

The question now before the Convention will be upon the motion as amended to strike out that portion of the report authorizing three clerks

The amendment was opposed in long debate by Vivion and Proctor and favored by Burleigh and Hedges

A call of the ayes and noes demanded by Mr Pease resulted as follows: ** 43 **

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		
Collins		/
Carroll		/
Callaway	/	
Catlin	/	
Cooper		/
Dixon		/
Daly		/
Douglass	/	
Eaton	/	
Eddy		/
Ferris	/	
Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell		/
Haase		
Hundley	/	
Langhorne		/
Medhurst		
McCormick		/
McSorley		/
Merriman	/	
Mills		/
Maloney		
McClintock		/
Napton		/
Pease	/	
Pemberton	/	
Proctor		/
Powers	/	
Robinson		

Smith	/
Savage	
Stell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/
14	22

The President –

Fourteen ayes and twenty two noes. The motion is lost ** 44 **

Mr Waterbury –

I move the adoption of that section of the report in relation to the employment of three clerks and their compensation.

Mr Hedges –

The motion is out of order. The first question is shall we have the officers

Mr Waterbury –

Then I move that the part of the resolution providing for the offices be appointed.

Seconded and carried

Mr Vivion –

I move now that the compensation of the three clerks be fixed at six dollars per day.

Seconded

The President –

It is moved that the compensation of the three clerks be fixed at six dollars. This is amended by the gentleman from Gallatin substituting five dollars ** 45 ** The question is on the amendment

The amendment being put was declared carried, and the motion with the amendment was carried

The President =

Read the next clause

The Secretary –

“Two stenographers (who shall take and preserve full stenographic notes of all proceedings of the Convention and write out in long hand such portion thereof as directed by the Convention) as fifteen dollars per day each.”

Mr Dixon –

That clause is amended by adding the words “from day to day”

Mr Hedges –

I move the clause be adopted

A call of the ayes and noes resulted as follows. ** 46 **

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		
Collins		
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon		/
Daly	/	
Douglass	/	
Eaton	/	
Eddy		/
Ferris		
Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley	/	
Langhorne		/

Medhurst	
McCormick	/
McSorley	/
Merriman	/
Mills	/
Maloney	
McClintock	
Napton	/
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Steel	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	
Mr. President	/

Mr. Callaway –

I desire to change my vote to no. ** 47 **

Mr Cooper =

I desire to change my vote to no

The roll call as changed resulted as follows:

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		
Collins		
Carroll	/	
Callaway		/
Catlin	/	

Cooper	/
Dixon	/
Daly	/
Douglass	/
Eaton	/
Eddy	/
Ferris	
Fergus	/
Green	/
Hunt	/
Hedges	/
Howell	/
Haase	
Hundley	/
Langhorne	/
Medhurst	
McCormick	/
McSorley	/
Merriman	/
Mills	/
Maloney	
McClintock	
Napton	/
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Stell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	
Mr. President	/

The President –

The vote stands as follows. Sixteen ayes and seventeen noes
the motion is lost

Mr Callaway –

Mr President I now move you sir, that the vote upon which the resolution as lost be reconsidered

Mr McCormick –

I move to lay that motion on the table

Seconded

Mr Callaway –

Ayes and noes

Upon roll call the vote resulted as follows: ** 49 **

	Aye.	No.
Abascal		/
Burleigh		/
Browne		
Collins		/
Carroll	/	
Callaway		/
Catlin		/
Cooper	/	
Dixon		/
Daly		/
Douglass		/
Eaton		/
Eddy	/	
Ferris		
Fergus		/
Green	/	
Hunt		/
Hedges		/
Howell		/
Haase		

Hundley	/
Langhorne	/
Medhurst	
McCormick	/
McSorley	/
Merriman	
Mills	/
Maloney	
McClintock	/
Napton	
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

17 18

Mr Douglas having voted aye, changed it to no. ** 50 **

Mr Merriman –

I desire to know what be marked my vote

The Secretary –

I havent marked it

Mr Merriman –

Well I vote aye.

The President –

The result is seventeen ayes and eighteen noes. The motion is lost. The motion is now upon the question to reconsider the vote by which the former question was lost.

The question being put was lost by a viva voce vote of nineteen noes to sixteen ayes.

Mr McCormick –

I move that the portion of the resolution authorizing the appointment of two stenographers be adopted

Seconded and carried.

The President –

The question now is as to compensation ** 51 **

Mr Hedges –

I move that the compensation be fixed at fifteen dollars per day each.

Seconded and carried

The President –

Read the next clause

The Secretary –

“One sergeant at arms at seven dollars per day”

Mr McCormick –

I move it be adopted providing for one sergeant at arms

Seconded and carried

Mr Vivion –

I move that portion of the report ~~relating~~ providing for seven dollars per day for the sergeant at arms be adopted.

Seconded

Mr Langhorne –

I amend by making it five dollars.

Seconded

The President –

The question is on the amendment

Mr Vivion objected to the amendment and Mr Langhorne supported it. ** 52 **

A call of the ayes and noes resulted as follows:

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		
Collins		/
Carroll		/
Callaway	/	
Catlin	/	
Cooper		/
Dixon		/
Daly		/
Douglass	/	
Eaton	/	
Eddy		/
Ferris		
Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell		/
Haase		
Hundley	/	
Langhorne	/	
Medhurst		
McCormick		/
McSorley		/
Merriman	/	
Mills	/	
Maloney		
McClintock		/
Napton		/
Pease	/	
Pemberton		/

Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

15 21 ** 53 **

The President –

The vote resulted fifteen ayes and twenty one noes. The motion is lost

Mr Toole –

I move, Mr President, that that portion of the report providing for the compensation of sergeant at arms be fixed at seven dollars per day.

Seconded

Mr Langhorne –

I amend by making it six dollars.

Seconded

The President –

The ~~motion~~ question is on the amendment

Vivion –

Ayes and noes –

A call of ayes and noes resulted as follows: ** 54 **

Aye. No.

Abascal	/
Burleigh	/
Browne	
Collins	/
Carroll	/
Callaway	/
Catlin	/
Cooper	/
Dixon	/
Daly	/
Douglass	/
Eaton	/
Eddy	/
Ferris	
Fergus	/
Green	/
Hunt	/
Hedges	/
Howell	/
Haase	
Hundley	/
Langhorne	/
Medhurst	
McCormick	/
McSorley	/
Merriman	/
Mills	/
Maloney	
McClintock	/
Napton	/
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Steel	
Stephens	/
Toole	/

~~Thornton~~

Vivion /

Van Gasken /

Waterbury /

Mr. President /

The President –

The vote resulted eighteen ** 55 ** ayes and eighteen noes. The motion is lost I believe according to the rules

Cries of – Yes. Yes. Right. The motion is lost

Mr Callaway –

It is evident that most of us at this end of the hall are in favor of adopting the report of the Committee. I move the report of the Committee be adopted.

Seconded

The President –

There is an amendment pending. The question now is upon the amendment of the gentleman from Gallatin to the motion of the gentleman from Lewis and Clarke, making the compensation six dollars. The amendment was offered to substitute six for seven.

The Vivion –

I object to the amendment but the gentleman on the floor have almost terrorized me with the idea that it is probable the Territory ** 56 ** may be broke, and I'll sit down

(Laughter)

Mr McCormick –

I call the gentleman from Gallatin to order. He has already made two speeches on the question

Mr Vivion –

I hadn't heard the question slated before

Mr McCormick –

I beg the gentleman's pardon.

Mr Calloway –

Whats the question

The President –

It is upon an amendment offered by the gentleman from Lewis and Clarke County, to the motion of the gentleman from Gallatin to substitute six instead of seven.

Voices – Question. Question Question

Mr Vivion –

Mr President, I am opposed

Mr McCormick –

I call the gentlemen to ** 57 ** order. He has already made one speech.

The President –

The gentleman has not spoken on this amendment

Mr Vivion –

I will leave the floor. I see the gentleman is anxious to say something

The question being put was carried by a viva voce vote

Mr Callaway. –

Now, Mr President, I renew my motion to adopt the balance of the report

Seconded and carried

Mr Burleigh –

Mr President, I now desire to submit the report of the committee on rules.

The President –

The secretary will read the report ** 58 **

RULES –OF THE – CONSTITUTIONAL CONVENTION – OF THE– TERRITORY OF
MONTANA

MR. PRESIDENT:

Your Committee on Rules report the following rules for the government of the Convention, and respectfully recommend their adoption.

ANDREW F. BURLEIGH,
Chairman of Committee.

RULES OF THE CONSTITUTIONAL CONVENTION.

No. 1. *President.* – The President shall take the chair at the time to which the convention stands adjourned, and the convention shall then be called to order, the roll called, and the names of absentees shall be entered upon the journal of the convention.

In case the President is absent, or fails from any cause to take the chair, the convention shall appoint a president *pro tem*. ** 59 **

No. 2. *Quorum.* – Upon the appearance of a quorum, which shall consist of a majority of the whole number of members, the journal of the preceding day shall be read by the Clerk, and any mistakes therein may be corrected by the convention.

No. 3. *Order.* – The President shall preserve order and decorum, and shall decide questions of order subject to an appeal to the convention.

No. 4. *President Shall Vote.* – The President shall vote on all questions taken by yeas and nays, and in all elections and divisions called for by any member.

No. 5. *Members shall remain Seated.* – When the convention adjourns, the members shall keep their seats until the President announces the adjournment.

No. 6. *Proper Decorum.* – Every member, previous to speaking, shall rise from his seat and respectfully address himself to the President.

No. 7. *Two or More.* – When two or more members rise at once, the President shall designate the member who is first to speak, but in all cases the member who shall rise first and address the chair shall speak first.

No. 8. *Not to Speak More than Twice.* – No member shall speak more than twice on the same subject without leave of the convention, nor more than once until every member choosing to speak on the question pending shall have spoken.

No. 9. *Motions to be Seconded.* – No motion shall be debated or put unless the same shall be seconded. It shall be stated by the President, and any such motion shall be reduced to writing, if the President, or any member, shall desire it.

No. 10. *Motions in Possession of the Convention.* – After any motion shall be stated by the President it shall be in possession of the convention, but may be withdrawn at any time before amendment or decision; but all motions, resolutions or amendments shall be entered upon the journal whether they are rejected or adopted.

No. 11. *Debate.* – When a question is under debate no motion shall be received, except: 1st, To adjourn; 2d, To lay on the table; 3d, For the previous question; 4th, To postpone to a day certain; 5th, To commit to a standing committee; 6th, To commit to a select committee; 7th, To amend; 8th, To postpone indefinitely; and these several motions shall have precedence in the order in which they stand arranged.

No. 12. *Adjournment.* – A motion to adjourn shall always be in order, except when a member is addressing the chair, or a vote is being taken; that, and the motion to lay on the table, shall be received without debate.

No. 13. *Previous Question.* – The previous question shall be in this form: “Shall the main question be now put?” It shall only be admitted when demanded by a majority of the members present, and its effect shall be to put an end to all debate and bring the convention to a direct vote upon the amendments reported by a committee, if any, upon pending amendments, and then upon the main question.

On a motion for the previous question, and prior to the vote being taken, one call of the convention shall be in order; but after a majority shall have seconded such motion, no call shall be in order prior to a decision of the main question.

No. 14. *Same.* – When, on taking the previous question, the convention shall decide that the main question shall not now be put, the main question shall remain as the question before the convention, in the same stage of proceedings as before the previous question was made.

No. 15. *Incidental Questions.* – All incidental questions of order, arising after a motion is made for the previous question, during the pending of such motion, or after the convention shall have determined that the main question shall now ** 60 ** be put, shall be decided, whether on appeal or otherwise without debate.

No. 16. *Petitions.* – Petitions, memorials and other papers addressed to the convention, shall be presented by the President, or by a member in his place.

No. 17. *Voting.* – Every member who shall be present before the vote is declared from the chair, and no other, shall vote for or against the same, unless the convention shall excuse him; or unless he is immediately interested in the question, in which case he shall not vote.

No. 18. *When the Question is being Put.* – When the President is putting the question, no member shall walk out of or across the hall; nor when a member is speaking shall any person entertain any private discourse, or pass between him and the chair.

No. 19. *Several Points.* – If the question in debate contains several points, any member may have the same divided.

No. 20. *Members Called to Order.* – A member called to order shall immediately sit down, unless he desires to explain, after which he shall take his seat, until the point of order be

decided by the chair, which shall be final, unless the member desires to appeal, in which case he shall have the right to arise, and ask the chair to put his motion to the convention, whose duty it shall be to immediately comply; and the question shall be: "Shall the decision of the chair be sustained?"

No. 21. *Title and Numbering of Propositions and Resolutions.* – Propositions and resolutions proposing matter, to be incorporated in the constitution, shall be prefaced with the title, briefly indicating the subject to which they refer. They shall be in writing, on legal cap paper, or printed, and shall be numbered by the Secretary, in the order in which they are introduced.

No. 22. *Resolutions limited to one Subject, Reading and Reference of Same.* – Propositions and resolutions mentioned in the last foregoing rule shall embrace one subject. They shall be read once when introduced, and then referred without debate to an appropriate committee.

No. 23. *General File.* – All propositions and resolutions embracing matter proposed to be incorporated in the constitution, reported by a standing or special committee, shall be read when reported, and shall be placed on a general file, to be kept by the Secretary, in the order in which they are reported. They shall be taken from the file and acted upon in the order in which they are placed thereon, unless otherwise ordered by the convention: *Provided*, That engrossed propositions and resolutions shall be placed at the head of the file in the order in which they are received. One hundred copies of the file for each day shall be printed.

No. 24. *Committees Not to Sit During Session.* – No committee shall sit during the session of the convention without leave.

No. 25. *Committee of the Whole.* – In forming a committee of the whole convention the President may preside or appoint a member to preside. Propositions or resolutions relating to the constitution shall be submitted to a committee of the whole convention and shall be read and considered in committee of the whole, by sections. All amendments shall be noted and reported to the convention by the Chairman. After report the proposition or resolution shall again be subject to amendment before the final vote shall be taken.

No. 26. The rules of the convention shall be observed in committee of the whole, so far as they may be applicable, except for limiting the time for speaking, and except that the ayes and noes shall not be taken, and that the previous question shall not be moved.

No. 27. A motion that the committee rise shall always be in order, and shall be decided without debate. ** 61 **

No. 28. *Orders, Resolutions, etc., which shall be considered in Committee of the Whole.* – Every order or resolution which proposes an alteration in the constitution, and all reports of

committees appointed to consider the propriety and expediency of making any alteration therein, shall be considered in committee of the whole, before they are debated and finally acted on in convention.

No. 29. *Convention. Parliamentary Practice.* – The rules of parliamentary practice, embraced in Jefferson's Manual, shall govern the convention in all cases when they are applicable and in which they are not inconsistent with the standing rules and orders of the convention.

No. 30. *Convention. Suspend, Alter or Amend.* – No rule of the convention shall be suspended, altered or amended, without the concurrence of two-thirds of the members present, except rules 21, 22, 23, 24, 25, 26.

No. 31. *The Reading of Papers.* – When the reading of a paper is called for, except petitions and memorials, and the same is objected to by any member, it shall be determined by the convention without debate.

No. 32. *Papers to be Left with Secretary by Members Absent.* – Every member before availing himself of a leave of absence, shall deposit with the Secretary all papers belonging to the convention.

No. 33. *Extra Pay.* – No increase of pay, nor any extra pay, shall be allowed to any officer or attaché of the convention, by resolution or otherwise, except by unanimous consent.

No. 34. *Employment of Committee Clerks.* – No committee shall be permitted to employ a clerk at the expense of the Territory, without first obtaining leave of the convention for that purpose.

No. 35. *Order of Business.* –

1. Roll call.
2. Reading and approval of the Journal.¹⁰ ** 62 **
3. Reading and presentation of petitions and memorials, under which head shall include remonstrances, communications from individuals and public bodies.
4. Communications for Territorial officers – under which head shall be embraced also, communications from public officers and corporations, in response to calls for information.
5. Reports of Standing Committees, in the order in which they stand in the rules.
6. Reports of Select Committees.
7. Introduction of Resolutions and Propositions relating to the Constitution.
8. Unfinished Business.

¹⁰ See after No. 44(22) for amendments that were placed beside this page on the slide. These were moved to the end of the rules for clarity.

9. Special Orders.
10. General Orders.
11. Miscellaneous Motions and Resolutions.

No. 36. *Reference of Resolutions, when Committees must Report.* – When a motion is made to refer any subject, and different committees should be proposed, the question shall be taken in the following order:

1. The committee of the convention.
2. The standing committee.
3. A select committee.

Every committee of the convention to whom a resolution or proposition has been referred, shall report the same to the convention within three days from the time in which it is received by the chairman of the committee, unless further time to report is granted. Every proposition or resolution shall be referred to the appropriate standing committee, as indicated by its name herein.

No. 37 *Motion or proposition Different: No Amendment.* – No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment. **
63 **

No. 38. *Time of Meeting.* – The hour of the daily meeting of the convention shall be 10 o'clock in the morning, until the convention directs otherwise.

No. 39. *Duties of Officers at the Close of the Session.* – The Secretary and Assistant Secretary at the close of the sessions of the convention, must deliver to the Secretary of the Territory, duly marked, labelled [*sic*] and arranged, all propositions, resolutions, petitions, memorials and other papers belonging to the convention, and also all books belonging to the same.

No. 40. *Substitutes.* – A substitute shall be deemed an amendment, and treated in all respects as such.

No. 41. *Standing Committees.* – The standing committees of the convention shall be as follows:

1. On Preamble and Bill of Right, to consist of five members.
2. Rights of Suffrage, to consist of three members.
3. On Legislative Department to consist of seven members.
4. On the Executive Departments, to consist of three members.
5. On Judiciary and Judicial Departments, including pardoning power, to consist of nine members.
6. On Military Affairs, to consist of three members.

7. On the finances of the State, public debt, the indebtedness of counties and municipalities, revenues, expenditures and taxation, and the restrictions to be place on the powers of the Legislature in respect thereto, to consist of nine members.
8. Education, to consist of three members.
9. State institutions and public buildings, to consist of five members.
10. On city, county and town organizations, to consist of three members.
11. Appointment and representation, to consist of three members.
12. Corporations (other than municipal,) to consist of five members.
13. Miscellaneous subjects and future amendments, to consist of three members.
14. On schedule, to consist of three members.
15. On mining, water and water rights, to consist of five members.
16. Agriculture, manufactures, commerce and immigration, to consist of five members.
17. Reporting and printing and mileage and contingent expenses, to consist of three members.
18. Privileges and elections, to consist of three members.
19. Engrossment and enrollment, to consist of three members.
20. Boundaries, Public lands and homestead exemptions, to consist of three members.
21. Revision, phraseology, and adjustment to consist of three members.
22. On ordinances five members.¹¹

RULE 25 AS AMENDED.

No. 25. Committee of the Whole.

In forming a Committee of the whole Convention the President shall appoint a member of the convention to preside. Propositions [*sic*] or resolutions relating to the constitution, shall be submitted to a committee of the whole convention, and shall be read and considered in committee of the whole, by sections. All amendments shall be noted and reported to the convention by the chairman. After report the proposition or resolution shall again be subject to amendment before the final vote shall be taken.

RULE 30 AS AMENDED.

Rule 30. *Convention suspend, alter or amend.* No rule of the convention shall be suspended, altered or amended without the concurrence of two-thirds of the members present: Except rules 21, 22, 23, 24, 25, and 26, which shall not be suspended without unanimous consent.

¹¹ The following amendments are found on slide 59 of the Proceedings (540 overall).

Rule 42. *Yeas and Nays*. The yeas and nays shall not be ordered unless demanded by two members. Except on the final passage of matter to be incorporated in the constitution; in which case the yeas and nays shall be had without demand.

No. 43. *Duties of Official Stenographers*. Before receiving the compensation provided for the official stenographers of the convention, they shall, after approval by the president, deliver to the secretary of the convention their full short hand and extended notes of the proceedings, to be by him delivered with other records to the Secretary of the Territory.

** 64 **

Mr Proctor –

Mr President, I believe here is one important committee overlooked in the report. The resolution of the last legislature calling this Convention requires us to provide by ordinance for a vote on the Constitution by the people. I now move to amend by adding a committee on ordinance

Seconded and carried –

Mr Smith –

Mr President, I move the adoption of the report as amended.

Seconded and carried

Mr Merriman –

Mr President, a resolution

The President –

The resolution will be read

The Secretary –

“Be it resolved that there be added four more members to the committee on mines, water rights and irrigation

Merriman” ** 65 **

Mr Proctor –

He is out of order

Mr Powers –

Mr President, I offer this resolution

The Secretary –

“Resolved that the President designate two members who with the President shall constitute a committee to report to the Convention such standing committees as they shall deem proper

Powers.

Mr Pemberton =

Mr President I think if the President desires to consult any member of the Convention in relation to committees, he will feel free to do it without the form of a resolution. I therefore move to lay the resolution on the table.

Seconded and carried.

Mr Burleigh –

Mr President, I move you, sir, that the secretary of the Convention be instructed to leave a hundred ** 66 **copies of the rules as reported and adopted printed for the use of the Convention.

Mr Mills –

I would like to offer a substitute for the motion. The Secretary of the Territory does the printing under the orders of the Convention, and if the Secretary is furnished with a copy he will have it printed

Mr Burleigh –

I accept the substitute

The President –

Please state the motion again

Mr Mills –

That the Secretary of the Convention furnish the Secretary of the Territory with a copy of the rules and the request that be furnished a hundred printed copies

Mr Langhorne

I will support the motion if the Secretary can furnish a copy other than the one now on the table

The President

I would like to inquire ** 67 ** when the printed copy can be furnished

Mr Mills –

We could get them in a few days

The President –

In the meantime we would be without the rules. It may be necessary to reclaim them

Voices –

Question

The motion being put was carried

Mr Vivion –

Mr President, I move you sir, that we proceed to the election of officers

Seconded and carried

The President –

Nominations for the office of assistant secretary are in order

Mr Hedges –

I nominate Mr James B. Wells.

Seconded –

Mr Collins –

I nominate Mr H. B. Riddell –

Seconded ** 68 **

Mr McCormick –

I nominate Mr James Blaine Walker.

Seconded

Mr Callaway –

I move the vote be taken by ballot.

Seconded and carried

The President –

I will appoint as tellers Mr Hunt of Choteau and Mr Smith of Beaverhead –

A ballot being taken resulted as follows:

Riddell –	14
Wells	11
Walker	8

The President –

There have been thirty three votes cast of which Riddell received fourteen, Wells eleven and Walker eight. No one of the candidates having received a majority of the votes cast, will prepare your ballots again

The second ballot resulted as follows ** 69 **

Riddell	15
Wells	16
Walker	5

The President –

There have been thirty six votes cast. Necessary for a choice nineteen. There is no election. Prepare your ballots again

Mr McCormick –

I desire to withdraw the name of James B Walker as Assistant Clerk

The third ballot resulted

Riddell	17
Wells	19

The President –

There have been thirty six votes cast of which Mr Riddell received seventeen and Mr Wells nineteen. Mr Wells having received the highest number of votes cast I declare him elected assistant secretary of this convention. ** 70 **

The President –

The next officers to be balloted for are three clerks.

Mr McCormick –

I nominate Mr James B. Walker.

Mr Langhorne –

I nominate Mr W. R. Armstrong

Mr Hedges –

I nominate W. F. Wheeler

Mr McCormick –

I move that the three gentlemen placed in nomination be elected by acclamation.

Seconded and carried

The President –

The next office to be filled is that of two stenographers

Mr McCormick –

I nominate John W. Imes.

Mr Merriman –

I nominate W. I. Lippincott

Voice –

I nominate Donald Washington

Mr Langhorne =

I move that we vote for two at a time. ** 71 **

Seconded and carried

Mr Hundley –

What is the object of voting for two at a time. Perhaps the gentleman who made the motion will explain.

The President –

It is understood that the two having the highest number of votes will be elected

Mr Langhorne –

If one of them has the highest number of votes cast, it will be between the other two.

A ballot being taken resulted as follows

Imes	31
Washington	5
Lippincott	35

The President –

The vote stands as follows Mr Lippincott received thirty five votes. Mr Imes thirty one and Mr Washington five. Lippincott and Imes having received a majority of the votes cast I declare them ** 72 ** to be elected the stenographers of this convention

Mr Toole –

I desire to place in nomination for the office of Sergeant at arms Samuel Alexander

Mr Pease –

I nominate John Hildt

A voice –

I move that Alexander be nominated by acclamation

Mr Pease –

I withdraw the name of John Hildt

The motion to elect Alexander by acclamation was put and carried

The President –

I declare Mr. Alexander to be elected Sergeant at Arms of this Convention

The President –

The office of fireman is next in order

Mr Hundley –

I nominate Buck Diller ** 73 **

Mr Proctor –

I move he be elected by acclamation

Seconded and carried

Mr Toole –

I think the office of assistant Sergeant at arms has been overlooked

The President –

That is true

Mr Toole –

I desire to nominate William Gibson for the office

Mr Toole –

I move he be declared elected by acclamation

Seconded and carried

The President =

Mr Gibson is elected assistant Sergeant at arms. Next in order are the pages

Mr Vivion –

I place in nomination the names of Stonewall Roe and James Shannon for the office of pages

Mr Hedges –

I desire to place in nomination the name of Robt. O. Merriman ** 74 **

Mr Stephens –

I move that we vote for two at a time

Seconded and carried

The ballot resulted as follows:

Roe	30
Shannon	29
Merriman	10

The President –

The vote is as follows Roe received thirty votes, Shannon twenty nine and Merriman ten. Roe and Shannon having received a majority of the votes cast are both elected as pages

Mr Langhorne –

I now move that the Convention adjourn until ten oclock tomorrow morning

Seconded and carried. ** 75 **¹²

** 76 **

= Third Day =

January, 16th, 1884 –

Convention called to order at ten oclock

President Clark in the chair.

Roll call. Quorum present

Mr. Napton –

Mr President, I desire to state that Mr. Toole is absent on account of sickness, and I would like to have the gentlemen of the Convention excuse him

Mr Green –

Mr President, Mr McSorley is also absent and I would like to have him excused

Mr Collins –

Mr President, I move both of the gentlemen be excused for the day.

Seconded and carried

Mr Langhorne –

Mr President, I would suggest before we proceed to business that the journal of the preceding day be read

Minutes of yesterday read corrected and approved ** 77 **

Mr Proctor –

Mr President – before proceeding to business I think it would be in order to make a motion to appoint a committee to wait upon the chief justice and request him to administer the oath of office to the new members and attaches or officers

Considerable debate followed –

¹² This page is the image of a folder labeled Proceedings. 3rd day, Jan. 16, 1884

Mr Collins –

Mr President, in order to bring this thing up properly I move that the President notify the gentleman from Beaverhead County to come before the President and take the oath of office

Seconded and carried.

Mr Langhorne -

Mr President, I would ask that Mr. Merriman be excused on further attendance to the convention today

The President –

If there is no objection Mr Merriman will be excused.

Mr Browne of Beaverhead, was duly ** 78 ** sworn in by the President and subscribed to the oath of office

Mr Mills –

Mr President I have a resolution to offer

The President –

Let the resolution be read

The Secretary –

“Resolved that the privileges of the floor of this Convention are hereby tendered to the members and representative of the press

Mills”

Mr Langhorne –

I move the adoption of the resolution

Seconded and carried

Mr Hedges –

I desire to offer a resolution

Mr Proctor –

Mr President. Yesterday we adopted certain rules, and in those rules was a certain order of business. Now I suggest that the order of business be presented to the chair and that we follow it. The rules have been adopted and it is the order of business of the Convention. ** 79 **

Mr Burleigh –

Rule forty one prescribes the order of business

The President –

The order of business will be followed –

Mr Langhorne –

Mr President, I move that one hundred copies of the order of business, as contained in the rules be printed on cardboard for the use of the members –

Seconded and carried

The President –

We have here the report of the Committee on mileage

Mr Maloney –

Mr President, I move that the reading of the report be dispensed with except the corrections that have been made.

Seconded and carried

The Secretary –

The report shows this correction

Jos. A. Brown	270
Edward W. Ferris	200 ** 80 **

Mr Maloney –

I move the report be adopted.

Seconded and carried

The President –

The secretary will read the resolution presented by Mr Hedges

The Secretary –

Be it resolved as expressive of the sense of this convention in recognition of the dignity of labor, its importance to the individual in promoting good morale and personal independence, its fundamental importance to the Commonwealth as a source of prosperity and security against vice and crime, that the proper Committee shall engraft the Constitution to be framed a provision to be enforced by appropriate legislation, that every boy before reaching –

(Secretary pauses)

Mr Fergus –

Majority. Before reaching his majority

The Secretary –

The word is omitted – before reaching his ** 81 ** majority shall have some useful trade, art, profession or occupation whereby he can maintain himself and a family, and that every girl before reaching the age of eighteen shall know how to cook, keep house and do plain sewing.

Hedges

Mr Langhorne –

Mr President, I move the resolution be referred to the committee on internal improvements

Seconded

Mr Pemberton –

I move it be referred to the committee on immigration, or I move to amend by referring it to a committee on miscellaneous law or any other thing –

Mr Burleigh –

I think the proposition is of such importance that it ought to be referred to a special committee I therefore move it be referred to a committee of three with the gentleman from Gallatin as chairman

Seconded ** 82 **

Laughter

The motion being put was carried

The President –

I will appoint on that Committee Mr Langhorne from Gallatin, Mr Burleigh of the First District and Mr Pemberton of Silver Bow.

Laughter and applause.

The President –

A resolution by Mr Proctor

The Secretary –

Resolved, that a Committee of three be appointed to wait upon the Governor and inform him that the Convention is now organized and ready for business and to ascertain from him if he has any communications to make to this Convention

Proctor

Mr Smith –

I move the resolution be adopted –

Seconded ** 83 **

Mr Langhorne –

I would like to inquire whether the Governor has any veto powers.

Laughter.

Mr Calloway –

I would like to inquire of the gentleman from Yellowstone the object of the resolution

Mr Proctor –

Briefly as a matter of Common Courtesy to the Executive of the Territory of Montana. That is all. I don't know whether he has any communications to make or has a right to communicate to this convention, but through common decency and courtesy I introduced the resolution, Mr Callaway.

Mr Callaway –

Mr President, it seems, sir, that it is useless for us to take any action in this Convention, that will make of it, or it's work, a farce. As far as the Courtesies are concerned, we have already extended that to the governor, ex-governor and others, in the right to seats on the

floor of this Convention ** 84 ** Did the legislative body call us here for the purpose of co-operating with the executive, who forms no part of this Convention, but is a part of the legislative branch of the Territory? The resolution offered by the gentleman is preposterous. I don't conceive that the Governor of the Territory has anything more to do with this Convention than any other citizen. He certainly has no authority here. He certainly has no veto power. If he desires, or any other citizen desires to address this Convention or memorialize it, that memorial or address, I doubt not, will be received by the Convention. As far as this joint resolution calling the Convention is concerned, the only official of the Territory who is directly interested in the Convention is the Secretary. I am opposed to that sort of proceeding that will admit of toading to officers because they are officers I don't know whether the Governor ** 85 ** of this Territory is a citizen of the United States or not, or even of the Territory for all I know he is just as liable to be a subject of the King of Italy as a citizen of the Territory of Montana I move to lay the resolution on the table

Seconded –

Mr Burleigh –

I call for the ayes and noes

The President –

I believe a call of the ayes and noes requires the assent of two members

Mr Green –

I also call for the ayes and noes

The roll call resulted as follows. Mr Abascal changing his vote from no to aye, before the result of the vote was announced ** 86 **

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne		/
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	

Cooper	/
Dixon	/
Daly	/
Douglass	/
Eaton	/
Eddy	/
Ferris	/
Fergus	
Green	/
Hunt	/
Hedges	/
Howell	/
Haase	
Hundley	/
Langhorne	/
Medhurst	
McCormick	/
McSorley	
Merriman	/
Mills	/
Maloney	/
McClintock	/
Napton	/
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Steell	
Stephens	/
Toole	
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

The President –

The result is as follows Ayes fifteen. Noes twenty. The motion is lost. The question is now on the original motion

Mr Vivion –

Mr President I move you the resolution be made the special order of the day for next Wednesday

The President –

The motion is not seconded. The question is on the original motion

Mr Callaway –

Ayes and noes

Mr Stephens.

Please have the resolution read

Resolution read by the Secretary

Mr Dixon –

Mr President, I move that this matter be indefinitely postponed

Seconded and carried

Mr Vivion –

Mr President, I move we adjourn until two oclock

Seconded ** 88 **

Mr Collins –

Mr President, before we adjourn I suggest that the officers of the Convention be sworn in

Mr Burleigh –

I was about to make a motion. I move that the President of the Convention do now swear in the clerks and other attaches of the Convention, to the faithful performance of their duties

Seconded and carried –

The following officers were then sworn in by the President

Paul L Van Cleave –	Secretary
James B. Wells –	Assistant Secretary
W. I. Lippincott	Stenographers
John W. Imes	
James B. Walker –	Clerks
W. R. Armstrong	
W. F. Wheeler	
Samuel Alexander	Sergeant At Arms
William Gibson	Asst. “ “ “
Buck Diller	Fireman ** 89 **
Stonewall Roe	Pages
James Shannon	

Mr Vivion –

I would like to know when it would suit the convenience of the President to announce the committees

The President –

I hope to be able to report the committees by tomorrow morning

Mr Daly –

Mr President, I am compelled to ask the Convention to excuse me for one week. The company I represent is a large one and their interests are vast. And it is hard and injurious for me to be away at the time. I occupy the position of superintendant, and during my absence Mr McCaskle is acting for me. I am now in receipt of a telegram stating that Mr. McCaskle has been suddenly taken ill and is now on his way east for treatment, and urging me, if possible to return to Butte. If excused I will return at the earliest possible moment. I do not wish to shirk my duty. I ** 90 ** was elected to the Convention and will do all in my power to achieve its ends and I am very sorry to ask you gentlemen of the Convention to excuse me for one week.

Mr Callaway –

Mr President, I move that Mr Daly be excused.

Seconded and carried –

Mr Daly –

Mr President and gentlemen of the Convention I thank you

Mr Callaway –

Mr President, I would like to bring the condition of this room before the convention, to see if something cannot be done. If this hall cannot be rendered more comfortable, I have been informed this morning that the Court house can be had for the use of the Convention. A gentleman told me this morning that it could be had, it will be a little further away, but it will be much more convenient. As far as the people of the Territory are concerned ** 91 ** they have some interest in this Convention and should at least have some place to sit. The acoustics of this room are fearful. When Mr Dixon or Mr Mills, at the other end of the room, are speaking it is almost impossible for the gentlemen on this side of the house to hear a word. And when we are saying anything it is almost impossible for them to hear us, which perhaps is a very fortunate thing – (Laughter) I wish to bring this thing before the Convention, that a committee be instructed to wait upon the Chairman of the Board of County Commissioners to see if the Court house can be had. I am told by removing the seats that are there now and simply screwed to the floor, we can move these desks in and have things much pleasanter

Mr Pemberton –

Mr President, I understood yesterday evening that it was probable the academy ** 92 ** of music could be had for the use of the future sessions of the Convention. I quite agree with the gentleman from Madison that something ought to be done. If we cant get the Academy of Music where harmony and sweet sounds prevail, let us move to some place nearer hell or pandemonium, or anywhere but here. I will offer a motion to move to Butte, or Bozeman or some other place

A voice –

Beartown.

(Laughter)

I want the committee to take into consideration the importance of acting and get some place. If Montana wanted to put a spy upon us, there would be no room for him in this place or if God Almighty wanted to put his eye upon us he would have to take off the roof. I desire that the committee be instructed to get the Academy of Music ** 93 ** Court house or some place, and if they cant do it I am in favor of moving the Convention to some other place

Mr Mills –

Mr President, In reply to the gentleman from Silver Bow, I will say that the Committee have investigated the Academy of Music and found it was engaged for a performance of some kind, minstrel show, or varieties, and the show was to commence in a day or two. Also that there are no side lights, and very poor air, and we have abandoned that idea.

We have also looked to securing Harmonica Hall, Miltons hall, Booker and Curtis and others and we have concluded that it is impossible to do anything except remain here. The Supreme Court has been occupying the court house, but this morning we learned that court had adjourned and we could get the Court house, but we must ** 94 ** take it as it is with the raised seats and without desks. I believe the house of lords in England is arranged in that way, but the people of Montana must have some place to put their feet. The committee will be pleased to be continued, and will gladly do everything possible, and ask for your instructions to that effect

The President =

The question is on the motion of the gentleman from Madison to arrange for a hall, and that instructions and authority to contract, be extended to the Committee. I believe that was your motion

Mr Callaway –

Yes sir. My intention was to leave the whole matter in the hands of the Committee – with full authority to act

The motion being put was carried ** 95 **

Mr Eaton –

I move we do now adjourn until tomorrow morning at ten oclock

Seconded and carried ** 96 **¹³ ** 97 **

January 17 1884,
4th Day Helena, MT

The convention met pursuant to adjournment at 10 a.m. Mr President in the chair. Roll called. Quorum present. Absent Burleigh, Callaway, Daly, McCormick, Merriman, McClintock, Napton, Pemberton, Powers, Smith, Toole, Vivion& Van Gasken. Total 13.

On motion of Howell, the convention adjourned to meet at Harmonia Hall at 2 P. M.

The Convention met pursuant to adjournment at 2 P. M.

Mr President in the chair

~~Journal of proceeding read and approved.~~

Roll called. Quorum present. Absent. Callaway, Daly, ~~McClintock~~, Napton – 3 –

¹³ This page is the image of a folder labeled Proceedings. 4th day, Jan. 17, 1884.

On motion of Langhorne, Callaway was excused for the afternoon.

Minutes of preceding meeting read and corrected and approved.

A communication from W. N. McGuire was read and on motion of Dixon referred to committee of Executive Department.

A communication from A.C. Batkin was read and placed on file ** 98 **

The following resolution was offered

Resolved

That the thanks of this body be and is hereby tendered to the Committee to whom was referred the matter of procuring a suitable hall for the accommodation of this Convention for the prompt, efficient and satisfactory manner in which their duty has been discharged, and that the same be discharged with thanks. Also that our hearty thanks be conveyed to the Hon. John S Tooker Secretary of Montana Territory for his ready and efficient co-operation in promoting the same.

Merriman ** 99 **

On motion of Maloney the resolution was adopted

~~The following resolution was offered~~

A resolution in the form of a memorial to Congress requesting certain land grants was offered by Douglass. ** 100 **

On motion of Collins the resolution was ordered laid on the table until the committees are appointed and then referred to the proper committee

A resolution was presented by Smith but on motion of ~~Callaway~~ Collins the reading of it was suspended until committees are appointed

The President announced his committees with vacancies until absentees should arrive, which are as follows.¹⁴

On motion of McCormick the Secretary of the Territory was requested to print 100 copies of the standing committees for use of the convention.

Carried

¹⁴ The committee assignments are on a piece of newspaper, which is folded on this slide to show the remainder of the text on the page itself. The next slide is a duplicate with the committee assignments showing. The committee assignments will be listed as page 99 and the repeated text omitted from that page.

Burleigh moved that the printed rules be referred back to the committee on rules for amendment and correction

Carried

Toole offered the following resolution and moved its adoption ** 101 **¹⁵

1. Preamble and Bill of Rights – McCormick, Napton, Power, Toole, Malony.
2. Rights of Suffrage – Cooper, Collins (one vacancy).
3. Legislative Departments – Langhorne, Merriman, Browne, Abascal, Pease.
4. Executive Departments – Mills, Eddy, Hundley.
5. Judiciary and Judicial Departments, including pardoning power – Dixon, Toole, Napton, McCormick, Callaway, Hunt, Vivion, Smith, Burleigh.
6. Military Affairs – Howell, Douglass, Eddy.
7. Finances of the State, public debt, the indebtedness of counties and municipalities, revenues, expenditures and taxation, and the restrictions to be placed on the powers of the Legislature in respect thereto – Collins, Power, Browne, Eaton, McSorley, Proctor, Abascal, Howell, (one vacancy).
8. Education – Hedges, Langhorne, Stephens.
9. State institutions and public buildings – Hundley, Waterbury, Douglass, McClintock, Daly.
10. City, county, and town organizations – Vivion, Carroll, (one vacancy).
11. Apportionment and representation – Callaway, McSorley, Pemberton.
12. Corporations other than municipal – Pemberton, Smith, Hedges, Howell, Fergus.
13. Miscellaneous subjects and future amendments – Browne, Vivion (one vacancy).
14. Schedule – Greene, Waterbury, Catlin
15. Mining, water, and water rights – Daly, Merriman, Eaton, Proctor (one vacancy).
16. Agriculture, manufactures, commerce, and immigration – Fergus, Carroll, Cooper, Catlin, Van Gasken.
17. Reporting and printing, and mileage and contingent expenses – McSorley, Mills, McClintock.
18. Privileges and elections – Toole, Van Gasken, Pease.
19. Engrossment and enrollment – Carroll, Malony, Hunt.
20. Boundaries, public lands, and homestead exemptions – Stephens, Greene (one vacancy).
21. Revision, phraseology, and adjustment – Smith, Burleigh, Dixon.
22. On ordinances – Proctor, Fergus, Eaton, McCormick, Greene.

** 102 **

¹⁵ Repeat slide, but a newspaper clipping hangs over the left margin and is transcribed as page 101.

Resolved that a committee comprising one member of from each county be appointed by the President with instructions to prepare a constitution and submit the same for the consideration of this convention at the earliest practicable moment!

Toole

Burleigh moved the following amendment which was accepted by Toole ** 103 **

~~Resolved, that in the the resolution pending be amended so as to read as follows:~~

Resolved that it is the sense of this Convention that the standing committees of the Convention proceed at once to the work of ~~preparing~~ preparing and reporting such provisions in Articles and sections as they think ~~properly express~~ should be incorporated in the Constitution, knowing giving due consideration to the matters which may be referred to them by the convention.

Dixon offered the following as a substitute which was adopted.

Resolved that the several standing Committees be directed to report to the Convention as speedily as practicable and without waiting for the reference to them of any resolutions introduced, such portions of the proposed Constitution as relate to the matters which such Committees are authorized to consider and which they recommend to be adopted.

Dixon ** 104 **

A communication from Judge Wade was received tendering the Judiciary committee the use of the room now occupied by the Territorial Law Library.

Mills moved that the committee on printing, mileage and contingent expenses be authorized to incur such contingent expenses as were, in their judgment necessary for the convention – carried.

On motion of McCormick the convention adjourned until 10 am tomorrow

P. L. Van Cleve
Secy ** 105 **¹⁶

** 106 **

Fifth Day –

January 18th 1884

Convention called to order at ten oclock

President Clark in the chair.

¹⁶ This page is the image of a folder labeled Proceedings. 5th day, Jan. 18, 1884.

Mr Howell –

Mr President, before the roll is called I would like to ask leave of absence for my colleague Mr. Callaway, who is confined to his bed by sickness

The President –

If there is no objection Mr Callaway will be excused

Roll call. Quorum present.

The President –

The gentleman from Gallatin County, Mr Ferris is present and it will be proper to have the oath of office administered to him. Mr Ferris, please come forward

Mr. Ferris, member from Gallatin County sworn in by the President and subscribed to the oath of office

The President –

The chair will state that ** 107 ** the Governor has kindly offered the use of the executive buildings as committee rooms for the use of the Convention.

The President –

The resolution in reference to the judiciary has not been referred to a committee I would like to know the desire of the member

Mr Pemberton –

Mr President I move its reference to the Judiciary Committee.

Seconded

Mr Merriman –

Mr President, I would like to have it read

The President –

Mr Secretary, please read the resolution

The Secretary –

Be it resolved that the following ** 108 ** shall constitute the article on Judiciary:

Article –

Section 1. The judicial power of the State of Montana shall be vested in a supreme Court, circuit court, Probate courts and courts of justice of the peace and police courts

Section 2 – The Supreme Court shall consist of four judges, who shall hold their office for a term of eight years.

Section 3 – The State of Montana shall be divided into four districts as nearly equal according to the population as practicable, and one judge of the Supreme court shall be elected from each district, and the first judge elected from the first district shall hold for two years only, whom a successor shall be elected for a full term and the first judge elected from the second district shall hold his office for four years, whom ** 109 ** a successor shall be elected for a full term, and the first judge elected under this constitution from the third district shall be elected for six years and a successor shall hereafter be elected for a full term.

Section 4 – No person shall be eligible as judge of Supreme Court, until he shall have been a practicing lawyer for eight years next preceding his election, and shall have been a citizen of the United States and of the State of Montana for at least one year

Section 5 – The qualifications of Circuit Court shall be the same as judges of the supreme court

Section 6 – The qualifications of Probate judges justices of the peace, police judges &c shall be fixed by law

Smith ** 110 **

The motion to refer to the judiciary committee was put and carried.

Mr Stephens –

Mr President, under section seven of the rules, relating to the introduction of resolutions, I sent by the page a resolution to the President's desk

The President –

Yes sir, the resolution will be read

The Secretary

“Revenue and Taxation proportion in relation to the Convention – All assessors and collectors of tax levies shall be appointed by the Tribunal or board with whom they have to settle that account

Stephens ** 111 **

Mr Pemberton –

Mr President, I move it be referred to the committee on finance

Seconded

Mr Collins –

Mr President I think the resolution should be referred to the proper committee by the President without the necessity of a motion.

Mr Proctor –

Mr President, In relation to that, I would say that if any member desires a resolution referred to a particular committee in the Convention and that committee is not designated on the bill or resolution, a motion to so refer it, would be proper, otherwise it is the duty of the President to refer without motion

Mr Stephens –

Mr President I think the proper committee to which the resolution should be referred can be readily ascertained by reference to the resolution itself. By reference to the head of the resolution. I find by reference to Rule 6. ** 112 **

Mr Pemberton –

Rule six is military affairs you mean rule 7

Mr Stephens –

Well rule 7 – that includes state and public debts, &c now that resolution is headed in reference to taxation, and hence in substance takes in that rule, &c. I hope the resolution will be referred to the Committee on finance of the State &c.

The President –

Was the motion seconded

Mr Pemberton –

I second the motion

Mr Burleigh –

Mr President, it seems to me the resolution providing for the election or appointment of assessors would more properly go to the committee on the organization of counties

The President –

I believe the gentleman is not in order. The rule is that the subject shall be referred without ** 113 **

the motion being put was carried.

The President.

The matter is referred to the committee on finances –

Mr Hedges –

Mr President – In order to give time for the committees to work, I move that we adjourn until ten oclock tomorrow morning

Seconded and carried ** 114 **¹⁷

** 115 ** Sixth Day

January 19, 1884

Convention called to order at ten oclock

President Clark in the chair

Roll call quorum present

Journal of yesterday read and approved. ** 116 **

Constitutional Convention

~~Sixth Day amendment of Rules—Miscellaneous~~¹⁸

~~The Constitutional Convention met at 10 a. m.~~

McCormick was excused on account of the illness of his wife. Pease was also excused, the death of Foreman Bell, of the Bozeman Coal company's mine, having made his presence in Bozeman necessary for a few days.

The Committee on rules reported in favor of amending several rules. One was rule 25, that when the Convention resolved itself into committee of the whole the President should appoint a member to preside; that propositions and resolutions relating to a constitution should be considered by section in committee of the whole. Rule 30 was amended so that it required a two-thirds vote to suspend, alter or amend a rule and that rules 21, 22, 23, 24, 25, and 26 could

¹⁷ This page is the image of a folder labeled Proceedings. 6th day, Jan. 19, 1884.

¹⁸ Indiscernible word scratched out on newspaper clipping

not be amended without unanimous consent of the committee. Rule 42 was amended so that except on the final passage of matters to be incorporated in the constitution a ye and nay vote must be demanded by at least two members. Rule 48 in relation to official stenographers was amended so as to provide that the stenographers, before receiving their compensation, shall deliver to the secretary their short hand report, also a long hand transcript of the same to be delivered by the secretary to the Territorial Secretary.

After extended discussion of the proposed amendments, the principal objection being to that in reference to certain rules requiring a unanimous vote in order to suspend them, the report, including the amendments, was adopted.

Merriman's memorial requesting Congress to make certain grants of land for Territorial buildings in Montana, and also for educational purposes and for river improvement, was read and ruled out of order, because it did not relate to the Constitution.

A proposition relating to the Judiciary and to the manner in which grand juries may find indictments, was read and referred to the Committee on Judiciary.

Merriman introduced a resolution for abolishing grand juries. Read and referred to the Committee on Judiciary.

Stephens introducing a proposition to the effect that there should be no distinction in citizenship on account of sex.

Collins introduced a resolution asking that the Committee on Finances be empowered to employ another clerk at \$5 per day for the time he is actually employed.

This created considerable discussion, members wanting to know whether the services of the three clerks already provided were employed. It was ascertained that they were.

Howell moved that Mr. Armstrong (one of the clerks who was working on the journal) be ordered to turn over his books and papers to the assistant secretary, and report to Mr. Collins for duty. The motion was adopted.

On motion, the privileges of the floor of the convention were extended to the President of the last Council, the Speaker of the House, and the Attorney General of the Territory.

The resignation of Wm. Gibson, assistant sergeant at arms, was received and read.

The convention then adjourned (without appointing Mr. Gibson's successor) till 10 o'clock Monday morning. ** 117 **¹⁹

** 118 ** Eighth Day January 21st / 1884

¹⁹ This page is the image of a folder labeled Proceedings. 8th day, Jan. 21, 1884.

Morning Session

Convention called to order at ten oclock

President Clark in the chair

Roll call resulted as follows.

Constitutional Convention

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		/
Collins		/
Carroll		/
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		/
Douglass	/	
Eaton	/	
Eddy		/
Ferris		/
Fergus		/
Green	/	
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley	/	
Langhorne	/	
Medhurst		
McCormick		
McSorley	/	
Merriman	/	
Mills	/	
Maloney	/	
McClintock		/
Napton	/	
Pease		/

Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	
Steel	** 119 **
Stephens	/
Toole	/
Thornton	/
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

McCormick – Excused until Tuesday morning

Minutes of Saturday read and on motion of Mills the reading of the rules as contained in the minutes was dispensed with.

Mr F. W. H. Medhurst of Silver Bow County, appeared and the oath of office was administered to him by the President

Under the order of business as amended by the President, the following memorial , offered on Friday was read, as follows:

The Secretary –

“Memorials to Congress requesting certain grants.

Resolutions. Resolved, that the Congress of the United States is hereby requested, upon the application of Montana, for admission into the ** 120 ** Union, to pass an act granting to the State of Montana, fifty thousand acres of land for the State of Montana, fifty thousand acres of land for the purpose of erecting and maintaining State buildings and other internal improvements.

Resolved that Congress be further requested to pass an act granting 20,000 acres of land for the improvement of the Missouri river from the Great Falls of the Missouri to its confluence with the Yellowstone river.

Resolved, that Congress be further requested to pass an act appropriating twenty thousand acres of land, for the improvement of the Yellowstone river from the town of Billings, Montana to its mouth.

Resolved – That the legislative assembly of Montana shall make provision for the sale or disposal of lands granted to the State for internal and river improvements and other purposes (except school lands) subject to the same rights of preemption, as now provided by law, to settlers on public lands. ** 121 **

Resolved – that Congress be further requested to appointment to the State fifty thousand acres of land for maintaining public schools throughout the state.

Resolved – That Congress be further requested to appropriate to the State fifty thousand acres of land for the purpose of creating and maintaining a state college or Institution of learning.

Douglass” ** 122 **

The President –

What is the purpose of the convention concerning the memorial

The Merriman –

Mr President, I move it be referred to the committee on education

Mr Hedges –

Mr President I move it be referred to a special committee of which Mr Douglass shall be chairman

Seconded and carried

The President –

Will the gentleman suggest the members.

Mr Hedges –

I did not name the members but three I think will be ample with Mr. Douglass as chairman

The President –

The chair will announce as the committee. Mr Douglass, Mr Eddy and Mr Waterbury –

The President –

The next order of business is reports of standing committees ** 123 **

Mr Vivion –

Mr President –

The following report from the committee on city and town organization, read as follows:

The Secretary –

“Mr President –

Your committee to whom was referred that portion of the Constitution relating to city, county and town organizations, would respectfully submit the following report and ask after careful examination by the Convention the same with alterations and suggestions as to the same which the Convention may deem most proper and just, be adopted

“City, County and Town organization”

Mr Proctor =

Mr President under the rules the reports of committees have to be printed, and under those rules I move the further reading of the report be dispensed with

Seconded ** 124 **

Mr Mills –

Mr President, I don't think a motion to that effect is necessary. Rule 23 suggests that and I believe obviates the necessity of a motion.

Mr Proctor –

My motion now to dispense with the reading of the report

The motion being put was carried

Mr Langhorne –

Mr President, did I understand that the motion was to dispense with the rules

The President –

No sir. To dispense with the reading of the report is all. I believe it would require the unanimous consent of the Convention to dispense with the rules. I think the convention has acted hastily upon this. It requires a suspension of the rule to dispense with the reading of the report

Mr Proctor –

Mr President, I will withdraw my motion, if there is no objection ** 125 **

The President –

We will consider the motion as not carried, and proceed with the reading of the report –

The Secretary –

“ARTICLE.

Section 1. The several counties of the Territory of Montana, as they now exist, are hereby declared

2 to be the counties of the State.

Section 2. The General Assembly shall have no power to remove the county seat of any county,

2 but the removal of county seats shall be provided for by General law, and no county seat shall be re-

3 moved, unless a majority of the qualified electors of the county, voting on the proposition at a General

4 election, vote therefor; and no such proposition shall be submitted oftener than once in four years, and

5 no person shall vote on such proposition who shall not have resided in the county six months, and in

6 the election precinct ninety days next preceding such election.

Section 3. No part of the Territory of any county shall be stricken off and added to an adjoining

2 county without first submitting the question to the qualified voters of the county from which the terri-

3 tory is proposed to be stricken off, nor unless a majority of all the qualified voters of the said county

4 voting on the question shall vote therefor.

Section 4. In all cases of the establishment of any new county, the new county shall be held to

2 pay its ratable proportion of all then existing liabilities of the county or counties from which such new

3 county shall be formed.

Section 5. When any part of a county is stricken off and attached to another county, the part ** 126 **

2 stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county

3 from which it is taken.

Section 6. When any county formed from contiguous territory taken from older counties, or when

2 any county to which territory shall be added taken from any adjoining county, shall fail to pay the

3 proportion of indebtedness of such territory to the county or counties from which it is taken, then it

4 may be lawful for any county, from which such territory has been taken, to levy and collect by taxa-

5 tion the true proportion of indebtedness of such territory, in the same manner as if the territory had

6 not been stricken off

Section 7. The General Assembly shall provide by General laws for the organization and classify-

2 cation of cities and towns. The number of such classes shall not exceed four; and the power of each

3 class shall be limited by General laws, so that all such municipal corporations of the same class shall

4 possess the same powers and be subject to the same restrictions. The General Assembly shall also

5 make provision, by General law, whereby any city, town or village, existing by virtue of any special or

6 local law, may elect to become subject to and governed by the General laws relating to such

7 corporations.

Section 8. No county, township, city or other municipality shall become a subscriber to the cap-

2 ital stock of any railroad, or other incorporation or association, or make any appropriation or donation

3 by subsidy or otherwise, or loan its credit to or in aid of such corporation or association, or to or in

4 aid of any college or institution of learning, or other institution created for or to be controlled by the

5 State or others. And no authority shall hereafter be conferred, for any of the purposes aforesaid, by

6 the General Assembly of the State. ** 127 **

COUNTY OFFICERS.

Section 9. In each county there shall be elected one county Judge, and two county commission-

2 ers, who shall compose the board of county commissioners, and who shall hold sessions for the transact-

3 tion of the county business, as provided by law, any two of whom shall constitute a quorum for the

4 transaction of business. The county Judge shall be chairman of the board of county commissioners,

5 and shall possess such qualification and have such jurisdiction as is herein elsewhere provided.

Section 10. The county Judge and commissioners shall hold their office for the term of
2 four years, and until their successors are elected and qualified as is provided by law, *Provided*,
that one

3 commissioner be elected every two years. That when the population of any county shall
exceed ten

4 thousand the board of county commissioners may consist of five members, including the
county

5 judge, who shall be elected as provided by law, any three of whom shall constitute a quorum
for the

6 transaction of business. Any vacancy from any cause in the board of county commissioners shall be

7 filled by the Governor by appointment, by and with the advice and consent of the Senate.

Section 11. There shall be elected in each county, as is provided by law, one county clerk, who

2 shall be clerk of the board of county commissioners and *ex officio* recorder of deeds; one sheriff; one

3 treasure (who shall be collector of taxes); one county superintendent of schools; one county sur-

4 veyor; one assessor; one coroner. Persons elected to the different offices named in this section shall

5 hold their respective offices for the term of two years, and until their successors are elected and qual-

6 fied. In case a vacancy occurs in any county office, save and except the board of county commiss-

7 ioners; the same shall be filled by the board of county commissioners, by appointment. The person

8 so appointed shall hold their office until the next general election, and until their successors are elect-

9 ed and qualified. There shall be elected in each county one county attorney, who shall hold his office ** 128 **

10 for the term of two years, and until his successor shall be elected and qualified, and whose qualifica-

11 tions and duties shall be as in this constitution provided, and hereafter provided by law.

Section 12. No person shall be eligible to any county office unless he be a qualified elector, nor

2 unless he shall have resided in the county one year next preceding his election.

Section 13. There shall be elected in each precinct, as provided by law, on Justice of the Peace

2 and one constable, who shall each hold his office for the term of two years. *Provided*, That in pre-

3 cincts containing two thousand or more inhabitants, the number of justices and constables may be in-

4 creased, as provided by law, any vacancy occurring in any precinct office shall be filled by the board of

5 county commissioners by appointment.

Section 14. The General assembly shall provide for the election or appointment of such other

2 county, township, precinct and municipal officers as public convenience may require; and their terms

3 of office shall be as prescribed by law, not in any case to exceed two years.

Section 15. The compensation of all county and precinct officers shall be as provided by law.

R. P. VIVION, Chairman Committee No. 10. ** 129 **

The President-

The Secretary will read this resolution

The Secretary –

“Legislation not to be prevented from providing for per diem

Nothing contained in this Constitution shall be construed so as to prevent the legislature of the State of Montana from providing by law for reasonable compensation and per diem for the members of the Convention

Douglass”

The President –

If there is no objection the resolution will be referred to the committee on finances of the State

Mr Powers –

Mr President – I desire to offer a skeleton of a constitution

The President –

The gentleman from the Third District desires to submit a skeleton of a constitution

Mr Powers –

Yes sir. And have it referred to a committee. I move the reading ** 130 ** of it be dispensed with

Seconded

The President –

To what committee do you desire it to be referred

Mr Powers –

The committee on Revision

The President –

If there is no objection the skeleton submitted by the gentleman from the Third District will be submitted to the Committee on Revision

Mr Proctor –

Mr President, before any other business intervenes, it doesn't seem to me, best to have the matter referred to a committee and printed while the members know what it contains. Let it be read or let the gentleman state what it is. There was a proposition on the same question voted down the other day, introduced by Mr Toole, and it seems to me before we incur the expense of printing it, we should see what it is. I call for the reading of it, or I would like the ** 131 ** gentleman from the Third District explain it.

Mr Power –

It is simply a form or arrangement taken from the Dakota constitution. Simply a skeleton of a constitution the heading beginning with a preamble and bill of rights – and going on through. It doesn't amount to anything at all. Just simply a stepping stone to a constitution. I would like to have it referred to a committee to be acted on.

Mr Proctor –

Mr President, it seems to me, a proposition of that kind will disarrange our whole procedure our rules provide how we shall proceed. Committees are to consider all propositions coming from members, except where special committees are appointed I

think a proposition of that kind coming in would require the appointment of several more committees ** 132 **

Mr Callaway –

Mr President, on the statement of the gentleman, Mr. Power, I cant see any objection to referring the matter to a committee for their consideration. Now, it is plain to the mind of every member of the convention, that as the committees have been arranged each is to have its special work.

The President –

Mr Callaway, there is no question before the convention

Mr Callaway –

No sir, but this is a question to refer this matter to a committee. If it is referred I have nothing to say.

The Secretary –

“Proposition to incorporate in the Constitution

“Section – No executive, legislative, judicial, ministerial, or other officer of this state, or of any legal subdivision, district, county or municipality thereof, shall during his term of office, accept, receive, ** 133 ** take the benefit of, or use any gratuity or pass, issued by any railroad corporation, or any agent, officer, or employee thereof, or of any department thereof, is issued by any agent, officer or employee of any other common carrier operated within this state, under the penalty of forfeiture of office and all the emoluments thereof

Sec – It shall be the duty of the legislature to enact appropriate and necessary laws to rigidly enforce the foregoing provision

Callaway”

The President –

If there is no objection the resolution will be referred to the committee on miscellaneous subject and future amendments.

The President –

The chair desires to make further amendments of committees. I will appoint Mr Ferris on the committee No 13. Miscellaneous subject and future ** 134 ** amendments, to fill

the vacancy I will appoint on committee No 7 Finances &c Mr. Medhurst. I will also appoint Mr Medhurst on Committee No 15. Mining, Water and Water Rights

Mr Power –

Mr President – I move that two more members be added to the Committee on Mining and water rights. It is a very important committee

Seconded

Mr Burleigh –

Mr President, it seems to me in order to do that it will require the suspension of the rules first. The rules which have been reported and adopted by the Convention fix the member of the committees.

Mr Power –

Mr President. The chairman of the committee is absent and will be detained for some time. He has sickness in his family, and as this is a very important committee, those are my reasons. ** 135 **

Mr Hedges –

In view of the great necessity I move the suspension of the rules

Seconded

Mr Proctor –

Mr President, I wish to state why I will support the motion. One reason why I support the motion is because there is liable to be complications between two of the most important interests of the community. The agricultural and mining interest. I notice by the construction of the committee that I am the only member who is not a delegate from an agricultural portion of the country, and I hope the motion will pass, as the agricultural element is as greatly interested in the property of Montana as any other portion for the community. And I hope to have the interest represented on the committee, and hope the motion will be adopted

Mr Eaton –

Mr President, as one of the members of the committee, I support the motion ** 136 ** to add members, but it seems to me the additional members to be added should include not only the agricultural element, but the best lawyer in this Convention. The water right question is a complicated one and hence the legal fraternity should be represented on the Committee

Mr Merriman –

Mr President, as chairman of the committee as it stands now, I would like to add four members instead of two I offer to amend the motion by adding four to the committee It is an important committee and I am aware of the fact and I will move to amend by adding four members

Seconded and carried

The original motion being put was carried

Mr Hundley –

Mr President, we have passed the order, but I would ask leave to make a report ** 137 ** from a standing committee

The Secretary –

Mr President, your committee on State Institutions and Public Buildings respectfully submit the following report and recommend its adoption

Mr B Hundley
Chairman of Committee
“State Institutions –

Section 1. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such

2 other institutions as the public good may require, shall be established and supported by the State, in such manner as may be prescribed

3 by law.

Section 2. The Legislature shall have no power to change or to locate the seat of government of the State, but shall, at its first ses-

2 sion, after the adoption of this Constitution, provide by law for submitting the question of the permanent location of the seat of govern-

3 ment to the qualified electors of the State, at the general election then next ensuing; and a majority of all the votes upon said question

4 cast at said election, shall be necessary to determine the location thereof. Said Legislature shall also provide that in case there shall be

5 no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have

6 been cast, shall be submitted in like manner to the qualified electors of the State, at the next general election: *Provided*, That until

7 the seat of government shall have been permanently located, as herein provided, the temporary location thereof shall remain at the city

8 of Helena.

Section 3. When the seat of government shall have been located, as herein provided, the location thereof shall not thereafter be

2 changed, except by a vote of two-thirds of all the qualified electors of the State, voting on that question at a general election, at which

3 the question of the location of the seat of government shall have been submitted by the General Assembly.

Section 4. The Legislature shall make no appropriations or expenditures for capital buildings or grounds until the seat of govern-

2 ment shall have been permanently located as herein provided.

Section 5. It shall be the duty of the Legislature to make provision, as soon as possible, for a State University, State Asylum, and

2 State Penitentiary: *Provided*, That not more than one of the aforesaid institutions shall be located in any county of this State, the

3 The location to be determined by a vote of the electors at large, at any general election; and that the trustees shall be appointed by the

4 Governor, by and with the advice and consent of the Senate.

Section 6. The Governor shall fill any vacancy that may occur in the offices aforesaid, until the next session of the Legislature, and

2 until a successor to his appointee shall be confirmed and qualified.

Section 7. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants, who by reason of

2 age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

The President –

It will be placed on file

Mr Pemberton –

Mr President, a resolution

The President –

The resolution will be read –

The Secretary –

“Resolved that the Territorial Auditor be requested to furnish, for the use of the convention an abstract of the votes cast in the Territory at the last general election

Pemberton

Mr Pemberton –

Mr President the object of the resolution is to procure that abstract for the use of the committee on appointments and representation. It will be very useful to the committee in fixing the representation

Mr Browne –

Mr President, I move its adoption

Seconded and carried

Mr Proctor –

Mr President I now move ** 139 ** that we proceed to the election of an assistant sergeant at arms

Seconded

The President –

If there is no objection we will proceed to the election

Mr Hunt –

Mr President. I move that the election be indeffinitely [*sic*] postponed

Seconded.

Mr Hunt –

Mr President, my object, sir, in making the motion, is, that we get along very well without an assistant sergeant at arms and there has been considerable disgust expressed on the part of the people, certainly on the part of the press, at the expense we have incurred. I think we employed too many clerks at the time they were appointed. We are getting along very well, now, and at the close of the session the sergeant at arms finds his hands full and needs an assistant it will be time enough to employ one. ** 140 **

Mr Proctor –

Mr President, I apprehend the gentleman from Choteau does not understand the nature of a motion to indeffinitely [*sic*] postpone from the fact that at the end of his remarks he says, if we find the necessity of a sergeant at arms, it will be time to elect one. If this motion to indeffinitely [*sic*] postpone is carried it will prohibit us from employing an assistant sergeant at arms altogether. It absolutely prohibits the question coming up again at any time. If the gentleman will move to lay it on the table it may be taken up at any time but a motion to indeffinitely [*sic*] postpone if carried cannot be taken up again during the session.

Mr Hunt.

Mr President, then I will withdraw the motion to indeffinitely [*sic*] postpone, and move to lay it on the table

Seconded.

The President –

The question is on the motion ** 141 ** to lay on the table the motion to elect an assistant sergeant at arms

Mr Proctor –

Ayes and noes –

Mr Toole –

Mr President – I think that motion ought not to be carried. Under the present arrangement as far as the occupancy of the hall is concerned it becomes necessary to move out the desks and furniture some two or three times a week. It is the proper business of the Sergeant at arms to look after the hall and furniture, the books, papers and so on belonging to the members of the convention. I am informed by the Sergeant at arms that in order to perform his duties properly he requires an assistant. The labors are too much for one. And I hope the motion will not be carried

The President –

I will state that the motion is not open for debate ** 142 **

Mr Toole –

Very true, it is not. Well, I have said all I desire to say anyway

Mr Mills –

Mr President, I move you the motion to elect an assistant sergeant at arms be indeffinitely [*sic*] postponed

Seconded.

The motion being put was lost by a vote of eleven affirmatives to twenty two negatives.

Mr Hedges –

Mr President, I move we adjourn until two oclock this afternoon.

Mr Merriman –

Mr President – I would like the gentleman to withdraw his motion. I move we proceed to the election of a chaplain

(Laughter)

Mr Proctor –

Mr President, there is a motion before the house not disposed of. A motion to proceed to the election of an assistant sergeant at arms ** 143 **

The President –

There is a motion to adjourn

Mr Hedges –

I yield my motion to adjourn

The President –

The question is on the motion to indeffinitely [*sic*] postpone

Mr Stephens –

Mr President, I move it be referred to the committee on miscellaneous subjects

(Laughter.)

The President –

Are you ready for the question to indefinitely [*sic*] postpone

Voices –

Question – Question

The question being put was declared by the president, lost

The President –

The question now recurs to the original motion, are you ready for the question?

Mr Hedges –

I call for the ayes and noes ** 144 **

The motion being put was carried viva voce

The President –

The motion is carried nominations for assistant sergeant at arms are in order

Mr Hedges –

I move we adjourn until two o'clock. I think some committees will be ready to report by this afternoon.

Mr Dixon –

I move to amend by making it tomorrow morning

Mr Hedges –

If the committees can report this afternoon, and I think they will be ready, we can get the reports printed earlier

Mr Dixon –

I withdraw my amendment

The question to adjourn was put and lost by a vote of 9 in the affirmative and 22 in the negative

Mr Eaton –

I move we adjourn until ten o'clock tomorrow morning – ** 145 **

Seconded

Mr Langhorne –

Mr President, the motion is out of order. There has been no intervening business

The President –

The motion to adjourn until ten oclock tomorrow morning is now –

Mr Langhorne –

Mr President, the motion is not in order. Our motion to adjourn is not in order, following another, without intervening business. I rise to a point of order

The President –

The point is well taken

Mr Maloney [*sic*] –

Mr President, I place in nomination John B. Donnelly

Mr McSorley –

I nominate W. A. Sloan of Jefferson county.

Mr Hedges –

Mr President. I now move we adjourn until two oclock this afternoon

Seconded ** 146 **

Mr Langhorne –

Mr President, I rise to a point of order that no motion to adjourn can be made when a member is addressing the Chair, or a vote is being taken. We are now proceeding to vote on this question.

Mr Eaton –

Mr President, I move the election of Sergeant at arms be by ballot.

Seconded and carried

The President –

I will appoint as tellers Mr Maloney and Mr Eddy.

The vote resulted as follows

Donnelly –	9
Sloan –	19

The President –

There have been twenty eight votes cast. Mr Donnelly received 9, and Mr Sloan 19. Mr Sloan having received the majority of the votes cast is declared elected assistant Sergeant at arms. ** 147 **

Mr Merriman –

Mr President, I will ask that the gentleman be sworn in. He is in the house –

Mr. Sloan sworn in as assistant Sergeant at Arms, by the President

Mr Hedges –

Mr President, I move we adjourn until two oclock this afternoon

Seconded

Mr Pemberton –

I move to amend by inserting ten oclock tomorrow morning –

Mr Hedges –

I will state my reason for wishing to adjourn until two oclock. Some of the committees will be ready to report by that time and we should get those reports in the hands of the printer as speedily as possible. It will expedite business

Mr Eaton –

Mr President, I believe there is such a thing as making haste ** 148 ** slowly. I think there are some committees to meet this afternoon and I think we should adjourn until tomorrow in order to give those committees time to act

Mr Mills –

I will sustain the motion as first made for the reason that I know something of the details of printing. Mr Hedges desires that the Committees should report and the report be placed in the hands of the printer. If we adjourn until this afternoon that may be done and the printer can furnish the printed copies so much earlier

Mr Pemberton –

I withdraw my amendment

Mr Eaton –

I will substitute one oclock

Mr Hedges –

I accept the amendment

Amendment put and carried ** 149 **

The President –

The question is now on the original motion

Motion to adjourn until one oclock put and carried

The President –

The convention stands adjourned until one oclock ** 150 **

Afternoon of 8th day

Eighth Day Proceedings

Convention called to order at one oclock. President Clark in the Chair. Roll call quorum present
Mr Hunt.

Mr Collins requested me to ask that he might be excused. Mr Collins is not feeling well
President pus the question to the House and Mr. Collins is excused.

Burleigh.

I move the reading of the journal be dispense with till – postponed till tomorrow morning.

Seconded

Motion put and carried

President.

Powers, McClintock, Van Gasken, Abaskel [*sic*] added to Committee on mineral and
water rights.

President

AFTERNOON SESSION

The convention resumed at 1 p. m.

Howell, from the Committee on Military Affairs, reported, recommending that the militia of the State of Montana shall consist of all able bodied men, between the ages of 18 and 45 years, unless lawfully exempt; that the Legislature shall provide for maintaining the militia by appropriation, and for the keeping of military records, relics, and banners; that the Governor shall be Commander-in-Chief of the State militia, except when it is in command of a United States officer, and that he shall have power to call out the militia to suppress insurrection or to repel invasion. Place on file.

EDUCATIONAL SUGGESTIONS.

Hedges, from the committee on Education presented a report covering the following points: That the Legislature of Montana shall establish and maintain a general, universal and thorough system of public free common schools; that the public school funds of the state shall consist of the proceeds of the sale of lands already granted and which shall hereafter be granted to the state by the general government, or by gift or grant of any person or corporation: also all estates that may escheat to the state and all unclaimed shares and dividends of corporations incorporated under Montana laws; that investment of the surplus of such funds shall so far as possible be made in public securities within the state, including school district bonds; that the state board of land commissioners shall consist of the Governor, Secretary of State, and Attorney General, who shall have the direction, control, and disposition of the school lands of the state; that interest on invested state school funds shall be apportioned among the districts according to the number of children of school age – no district to have any part thereof which does not have at least three months of school for the year; that deficiencies in the amount required shall be supplied by tax levy (or otherwise) made by Legislature; that the public free schools of the state shall be open to all children of school age and the Legislature may provide for the compulsory attendance for at least three years of children between the ages of five and fifteen years when not educated by other means.

That in all school elections women shall be entitled to vote the same as men and shall be eligible to office under the school law; that no school monies or public funds shall be appropriated to any church or sectarian purpose or to support any school or institution controlled by any church, sect, or denomination. That no religious or sectarian qualification shall be necessary for the admission of any pupil or for the employment by any teacher, nor shall any sectarian tenets be taught in any public school of the state; that the election of school officers

²⁰ From slide 152, but put here for clarity.

²¹ Newspaper/print clipping laid over previous page on this slide

(not including school district officers) shall take place, if possible, at other than what is generally known as a general election; that four persons to be known as the "Regents of the University of Montana" shall be elected at the first general school election, their only compensation to be the actual expense of discharging their official duties. The Regents shall choose a President of the University who shall hold office until removed by them. The President shall preside at meetings of the Board, shall be the principal executive officer of the University and shall be a member of the faculty thereof. The Board of Regents shall have the general supervision of the University and exclusive control of its monies and lands.

The report was filed

The report of the committee on revenue and taxation was read and referred to the committee on finance, after which the convention adjourned until 10 o'clock tomorrow morning. ** 152 **

Howell.

Mr Chairman I wish to present a resolution

Placed on file by order of the President.

Hedges.

Presents a resolution as chairman of Committee on education

Resolution is on file with the Sec.

President.

I would like to ask if it is Sec wishes to know whether all resolutions and propositions are engrossed

Proctor.

It seems to me that engrossing is not required. I do not understand the rules require motions on resolutions to be printed. Those resolutions and propositions that go in the body of the Constitution, the rules do not require them to be printed. That is my understanding of the rules.

Mills.

When these reports are made by the standing committee if ** 153 ** they come into possession of this body, and if they go to the printer without engrossing they might be lost.

Howell.

It would be necessary for the Sec. of the Convention to deliver to the Committee a certified copy. There is no necessity for engrossing.

As long as the copy is the same as presented it would be foolish to have it engrossed. The Sec. should preserve the original copy and furnish to the printer a certified copy.

Mills.

That is what the clerk means whether he shall furnish the original resolution or certified copy.

Proctor.

The gentleman from Silver Bow is correct in that proposition. What the Sec. is required to do, furnish the printer with a copy of the report of the Committee. ** 154 ** It still is never engrossed till it passes through the hands of the Committee – Committee of the whole. When the Convention determines the character of the bill. Then it is referred to the engrossing committee. The Committee never engrosses till in the Convention of the whole for their report to be adopted in the Convention of the whole. After it is engrossed there is no way to amend it. You can not amend the bill after it is engrossed, except when it comes up for final passage.

Howell.

Move the Convention now adjourn till tomorrow.

Callaway.

I wish to offer a resolution. Do not think there will be any objection to it. ** 155 **

President.

Will the gentleman withdraw his motion to adjourn?

Withheld

Burleigh offers a resolution.

Callaway moves his motion to be adopted.

Body of this resolution on file with the Sec.

President.

(Puts Callows [*sic*] motion which is carried)

Burleigh's motion is read.

Body as on file with the Sec.

Howell.

I move it be referred.

Burleigh.

I suggest it be referred to the Committee on finance.

(President puts the motion and it is carried)

Howell.

I move we do now adjourn.

Motion put and carried.

After adjournment, the President announced that he had received ** 156 ** a telegraph from Mr. McCormick requesting that he, Mr McCormick might be excused till Wednesday.

There being no objection Mr McCormick was excused until Wednesday. ** 157 **²² ** 158 **

Ninth Day = Jany 22. 1884

Morning Session –

Convention called to order at ten oclock.

President Clark in the chair

Roll Call. Quorum present.

As follows: –

Constitutional Convention

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne	/	
Collins		
Carroll	/	
Callaway	/	
Catlin	/	

²² This page is the image of a folder labeled Proceedings. 9th day, Jan. 22, 1884.

Cooper	/	
Dixon	/	
x-Daly		
Douglass	/	
Eaton	/	
Eddy	/	
Ferris		/
Fergus	/	
Green		/
Hunt		/
Hedges		/
Howell	/	
x-Haase		
Hundley		/
Langhorne	/	
Medhurst	/	
x-McCormick		
McSorley	/	
Merriman	/	
Mills	/	
Maloney		/
McClintock		/
Napton	/	** 159 **
Pease		/
Pemberton	/	
Proctor	/	
Powers	/	
x-Robinson		
Smith	/	
x-Savage		
x-Steel		
Stephens	/	
Toole	/	
x-Thornton		
Vivion	/	
Van Gasken	/	
Waterbury		/
Mr. President	/	

X not called

The President –

Mr McCormick has telegraphed to Mr Eddy, asking leave for him until Monday morning. If there is no objection the leave will be granted

Journal of yesterday read and approved

Under the order of business as announced by the President, the following report was received from the committee on corporations other than municipal

The Secretary –

Mr President. Your committee on corporation other than municipal ** 160 ** beg leave to report the accompanying provisions of incorporations and recommend that they be incorporated in the Constitution

W. Y. Pemberton
Chairman

Article on Corporations –

Section 1. All existing charters or grants of special or exclusive privileges, under which the corporators or grantees shall not have organized or commenced business in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

Section 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, education, penal or reformatory corporations as are or may be under the control of the State; but the General Assembly shall provide, by general laws, for the organization of corporations hereafter to be created.

Section 3. The General assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the State, in such manner however, that no injustice shall be done to the corporators.

Section 4. The General Assembly shall provide by law that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors or mana-

4 gers to be elected, or to cumulate said shares and give one candidate as many votes as the number of
5 directors multiplied by the number of his shares of stock shall equal, or to distribute them on the
6 same principle among as many candidates as he shall think fit. And such directors or managers shall
** 161 **

7 not be elected in any other manner.

Section 5. All railroads shall be public highways, and all railroad companies shall be common
2 carriers. Any association or corporation organized for the purpose shall have the right to constitute
3 and operate a railroad between any designated points within this State, and to connect at the State
4 line with railroads of other States and Territories. Every railroad company shall have the right with
5 its road to intersect, connect with, or cross any other railroad.

Section 6. No railroad corporation, or the lessees or managers thereof, shall consolidate its
stock,
2 property, or franchises with any other railroad corporation owning or having under its control a paral-
3 lel or competing line.

Section 7. All individuals, associations and incorporations shall have equal rights to have
persons
2 and property transported over any railroad in this state, and no undue or unreasonable discrimination
3 shall be made in charges or in facilities of transportation of freight or passengers within the State, and
4 no railroad company, nor any lessee, manager or employe [sic] thereof, shall give any preference to indi-
5 viduals, associations or corporations in furnishing cars or motive power.

Section 8. No railroad or other transportation company in existence at the time of the adoption
2 of this constitution shall have the benefit of any future legislation, without first filing in the office of
3 Secretary of State an acceptance of the provisions of this constitution in binding form.

Section 9. The right of eminent domain shall never be abridged nor so construed as to prevent
2 the General Assembly from taking the property and franchises of incorporated companies and sub-
3 jecting them to public use, the same as the property of individuals; and the police powers of the

4 State shall never be abridged or so construed as to permit corporations to conduct their business in
5 such manner as to infringe the equal rights of individuals or the general well being of the State.

Section 10. No corporation shall issue stocks or bonds, except for labor done, services
performed,
2 or money and property actually received, and all fictitious increase of stock and indebtedness shall be
3 void. The stock of corporations shall not be increased except in pursuance of General law, nor with-
** 162 **
4 out the consent of the persons holding a majority of the stock, first obtained at a meeting held after
5 at least thirty days' notice given in pursuance of law.

Section 11. No foreign corporation shall do any business in this State without having one or
2 more known places of business, and an authorized agent or agents in the same, upon whom process
3 may be served.

Section 12. No street railroad shall be constructed within any city, town or incorporated
village,
2 without the consent of the local authorities, having the control of the street or highway
proposed to
3 be occupied by such street railroad.

Section 13. The General Assembly shall pass no law for the benefit of a railroad or other
corpo-
2 ration, or any individual or association of individuals, retrospective in its operation, or which
imposes
3 on the people of any county or municipal subdivision of the State, a new liability in respect to
transact-
4 tions or considerations already past.

Section 14. Any association or corporation, or the lessees or managers thereof, organized
for
2 the purpose, or any individual, shall have the right to construct and maintain lines of telegraph
within

3 this State, and to connect the same with other lines; and the General Assembly shall by general law

4 of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph

5 company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other tele-

6 graph company, owning or having the control of a competing line, or acquire by purchase or other-

7 wise any other competing line of telegraph.

Section 15. If any railroad, telegraph, express or other corporation organized under any of the

2 laws of this State shall consolidate by sale or otherwise, with any railroad, telegraph, express or other

3 corporation organized under any of the laws of any other State or Territory, or of the United States,

4 the same shall not thereby become a foreign corporation, but the courts of this State shall retain

5 jurisdiction over that part of the corporate property within the limits of the State, in all matters that

6 may arise, as if said consolidation had not taken place. ** 163 **

Section 16. It shall be unlawful for any person, company or corporation to require of its servants

2 or employees [*sic*], as a condition of their employment or otherwise, any contract or agreement whereby

3 such person, company or corporation, shall be released or discharged from liability or responsibility on

4 account of personal injuries received by such servants or employees [*sic*] while in the service of such per-

5 son, company or corporation, by reason of the negligence of such person, company or corporation,

6 or the agents or employees [*sic*] thereof; and such contracts shall be absolutely null and void.

W. Y. PEMBERTON,

Chairman Committee on Corporations other than Municipal. ** 164 **

The President –

Place it on file in proper order.

The Secretary –

“Mr President. Your committee on boundaries, public lands and homestead exemptions, beg leave to report the accompanying sections, which they recommend to be incorporated with and become a part of the Constitution of Montana

Stephens
Chairman”

Section 1. The boundaries of the State of Montana shall be as follows, to-wit:
Commencing at a

2 point formed by the intersection of the twenty-seventh degree of longitude west from Washington, with

3 the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point

4 formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due

5 south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and

6 thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky Moun-

7 tains; thence following the crest of the Rocky Mountains northward to its intersection with the Bitter

8 Root Mountains; thence northward along the crest of said Bitter Root Mountains to its intersection

9 with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree

10 of longitude northward to the boundary line of the British Possessions; thence eastward along said

11 boundary line to the twenty-seventh degree of longitude west from Washington; thence southward

12 along said twenty-seventh degree of longitude to the place of beginning. The boundaries of counties ** 165 **

14 [*sic*] shall be established by statute.

Section 2. Hereafter, the Homestead, consisting of the lands and family dwelling-house thereon,

2 also the improvements and out-buildings appurtenant thereto, of each head of a family resident in this

3 State, of the value not exceeding five thousand dollars, shall be exempt from forced sale on execution or

4 otherwise except for the purchase money, laborers' or mechanics' liens, or taxes.

Section 3. All lands granted by Congress to this State, not reserved by the State for public insti-

2 tutions, shall be limited to acquisition and purchase by actual settlers, under provisions to be prescribed

3 by the State legislature.

Section 4. Conceding the paramount title to the public lands to be in the United States, yet as

2 between the residents of this State until the public lands are surveyed, the Legislature shall prescribe

3 the manner and amount of such lands that any one person, or association of persons, may appropriate,

4 occupy and use.

STEPHENS,

Chairman Committee on Boundaries, Public Lands, etc. ** 166 **

The President –

Place it on file

Mr Douglass –

Mr President, the report of a select committee ** 167 **

The Secretary –

“Mr President, your committee appointed to examine resolutions memorializing Congress to appropriate certain lands for internal and river improvements, and other purposes, tender their report herewith and recommend its adoption.

S. R. Douglass
E B Waterbury
R A Eddy
Committee

Memorials to Congress requesting certain grants.

Resolutions –

Resolved – That the Congress of the United States is hereby requested upon the application of Montana for admission into the Union to pass an act granting to the State of Montana fifty thousand acres of land for the purpose of executing and maintaining State buildings and other internal improvements.

Resolved – That Congress be further requested to pass an ** 168 ** act granting twenty thousand acres of land for the improvement of the Missouri river, from the Great Falls of the Missouri to its Confluence with the Yellowstone river

Resolved – That Congress be further requested to pass an act, appropriating twenty thousand acres of land for the improvement of the Yellowstone river, from the town of Billings Montana, to its mouth.

Resolved – That Congress be further requested to appropriate 20, 000 acres of land for removing obstructions to navigation and opening the Pen D’Orielle [*sic*] or Clark Fork of the Columbia river to the free access of salmon to its numerous tributaries in Montana.

Resolved – That the legislative Assembly of Montana shall make provision for the sale or disposal of lands granted to the State, for internal and river improvements and other purposes (except school lands) subject to the same rights of preemption as now provided ** 169 ** by law to settlers, on the public lands

Resolved – That Congress be further requested to appropriate to the State fifty thousand acres of land for the purpose of creating and maintaining a state college or institution of learning

Douglass

The President –

What is your pleasure concerning the resolution.

Mr Waterbury –

Mr President, I move its adoption.

Seconded

Mr Hedges –

Mr President, I do not know about the propriety of placing that resolution in that form. The first part of it is very proper indeed, but as far as the appropriations of land for the improvement of the Missouri and Yellowstone rivers are concerned, it strikes me the government is committed on that question fully already, and I think ** 170 ** there are other objects for which we shall need these appropriations, and I think it should be done without any such proportion. I much regret to say that for the improvements of the streams we should rest on another basis than the money to be derived from the sale of lands or the undertaking on such an uncertain basis as this. The improvement of streams is in pursuance of a general plan and purpose. We cant improve one part of a river without the other, and the situation at present is such that I conceive that there is no more doubt the government will improve the Missouri river and all its tributaries, than I have that the Sun will shine. And I think if this resolution passes it will throw doubt and disrespect on some more worthy object that we shall want. As for the university provision for that has already been made, for a certain number of section of land. ** 171 ** The gentleman who drew this resolution evidently didn't have this in mind, for the proposition has already been made and the land has already been selected for the University of Montana. If this is to be pressed at all it ought to be in recollection as that, and should not ask for that which has already been given. I think in the shape the resolution comes it involves several propositions that I can hardly concur in. I should like to see the resolution subdivided and offered separately –

Mr Dixon –

Mr President, I do not desire to take up time discussing this matter, but it seems to me if the resolution is adopted, we are making rather a bad start towards applying for admission into the Union. As to the appropriations applied for they are very beneficial or useful. It seems to me ** 172 ** when we go to Congress with the Constitution and ask them to admit us as a state we shouldn't carry in our hands a begging petition. We haven't a very favorable show for admission as it is, but this matter, as I understand it in regard to granting lands goes, as a matter of course to a new state, and we will receive that. I Think it very impolite to add that clause. Neither does it strike me as being in the

province of the Constitutional Convention to memorialize Congress to make appropriations that will come very properly from the legislature of the Territory. And as far as I am concerned I don't like this manner of commencing by going with a begging petition in our hands. ~~Congress will admit it to come in or State law, as other State laws do.~~ I don't want them to say ** 173 ** here is another beggar knocking at the door for admission. I don't think it is within the province of the Constitutional Convention. I don't think it is policy to adopt laws and resolutions at this time, and I therefore move to lay the resolution on the table

Seconded

Mr Stephens –

Mr President, I don't think this is a matter for discussion

The President –

Not a motion to lay on the table.

Motion put and carried

Mr Pemberton –

Mr President, a resolution

The Secretary –

Proposition to be incorporated into the Constitution

Every incumbrance, mortgage, pledge or conveyance of the Homestead allowed by ** 174 ** law, which conveyance is intended for a mortgage or incumbrance, although the same may be absolute, and indefeasible on the face thereof, shall be absolutely null and void. Provided nothing therein contained shall prevent the sale of the Homestead in good faith.

Pemberton”

The President –

If there is no objection it will be referred to the committee on boundaries and public lands

Mr Proctor-

I move it be referred to the committee on judiciary

Seconded and carried

The Secretary –

Proposition in relation to the Constitution – Forest Fires

The general assembly shall enact suitable laws to prevent the destruction by fire from railroad locomotives, or any other cause and keep in good preservation its grasses and forests upon the lands of this state or upon the lands of the public domain, the control of which ** 175 ** may be conferred by Congress upon this State.

Cooper

The President –

If there is no objection I will refer it to the Committee on miscellaneous subjects

Mr Hunt –

Mr President, a resolution

The Secretary –

“Resolved that a select committee of three be designated by the chairman of this Convention for the purpose of penning an address to the people of the Territory of Montana, setting forth the more salient features of the Constitution when adopted and urging its ratification by the voters in 1884

Hunt”

Mr Hunt.

Mr President I move its adoption

Seconded

Mr Hunt –

Mr President, my object in introducing the resolution at this ** 176 ** time is to facilitate the business of the Convention. There will be a great deal to do towards the close of the session and I think it will expedite matters if the address of all salient features contained in the constitution is framed as we go along, and that is my object in introducing it at this time

Mr Collins –

Mr President, that being rather an important Committee I would substitute 5 or 7 members instead of three

Mr Hunt –

I am willing to insert five

The motion was put and carried

The President –

I will announce the Committee before adjournment, this afternoon

Mr Hedges –

Mr President, I move the Convention now adjourn until two oclock this afternoon ** 177
**

Mr Pemberton –

I would like to ask the gentleman if there are any Committees to report this afternoon. If not the Committees will desire to be at work, and I move to amend by inserting tomorrow morning at ten oclock

Mr Hedges –

I accept the amendment.

Mr Burleigh –

Mr President, I would like to inquire when some of the reports of the committees filed will probably be printed.

The President – The Secretary says the Convention will not receive anything from the printer's hand until toward evening.

Mr Collins –

Mr President. I would like to ask a question, if the gentleman making the motion to adjourn will allow me. I would like to ask if the public printer is doing our printing or if some outside printer is doing it. I understand that ** 178 ** we have a public printer, and I would like to ask the Chairman if he is doing the printing or some one else.

The President –

The chair is unable to inform the gentleman from Choteau who is doing the printing. I don't know who is directing the matter

Mr Mills –

Mr President. There is a printing committee appointed and it having been assigned as a portion of my work, I will state that the fifth section of the resolution under which this convention is called reads, "The Secretary of the Territory is hereby authorized and empowered to procure and suitably furnish, for the use of said Convention, a suitable hall and committee rooms, also necessary fuel, lights, and stationary for uses therein, also he shall procure all necessary printing to be done at the request of the Convention. It seems to me it leaves nothing ** 179 ** for us to say about it. We apply to the Secretary and it remains for him to see that it is done. The committee understand that they have no authority to go to anybody but the Secretary

Mr Pemberton –

Move we adjourn

The motion to adjourn until tomorrow morning at ten oclock was put and carried ** 180
**²³ ** 181 **

Tenth Day = January 23rd 1884

Morning Session

Convention called to order at ten oclock

President Clark, in the chair

Roll Call. Quorum Present, as follows:

	Present/Absent	
	Aye.	No.
Abascal	/	
Burleigh	/	
Browne	/	
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
X Daly		
Douglass		/
Eaton	/	

²³ This page is the image of a folder labeled Proceedings. 10th day, Jan. 23, 1884.

Eddy	/	
Ferris		/
Fergus	/	
Green	/	
Hunt	/	
Hedges		/
Howell	/	
X Haase		
Hundley	/	
Langhorne	/	
Medhurst	/	
McCormick	/	
McSorley	/	
Merriman	/	
Mills	/	
Maloney		/
McClintock	/	
Napton		/
Pease		/
Pemberton	/	
Proctor	/	
Powers	/	
X Robinson		** 182 **
Smith	/	
X Savage		
X Steell		
Stephens	/	
Toole	/	
X Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	

X absent/excused

Mr Toole –

Mr President, I am requested by Mr Napton to ask that he be excused for five days. He has business in Silver Bow County and will be absent that long.

The President –

If there is no objection the leave will be granted

Mr Burleigh –

Mr President, Mr C. W. Savage of Miles City, is now present and desires to be sworn in as a member of this Convention

The President –

Mr Savage will step forward to the desk and be sworn

C. W. Savage of Custer County sworn in by the President. ** 183 **

Journal of yesterday read and approved.

Under the order of business as announced by the President the Secretary read the following report

The Secretary –

“Mr President, Your committee on Rights of suffrage by leave to report the following, and recommend its adoption into the Constitution

Article on Rights of Suffrage

Section 1. All elections by the people shall be by ballot.

Section 2. Every male person over the age of twenty-one years, possessing the following qualify-

2 cations, shall be entitled to vote at all general elections: First – He shall be a citizen of the United

3 States, or, not being a citizen of the United States, he shall have declared his intention, according to

4 law, to become such citizen, not less than four months before he offers to vote. Second – He shall

5 have resided in the State six months immediately preceding the election at which he offers to vote,

6 and in the county, town or precinct such time as may be prescribed by law.

Section 3. No elector shall be deemed to have lost his residence in this State by reason of his ab-

2 sence while in the civil or military service of the State, or the United States, nor while a student
at

3 any institution of learning, nor while kept at public expense in any poor house or other asylum,
nor ** 184 **

4 while confined in public prison.

Section 4. Electors shall in all cases, except treason, felony, or breach of the peace, be
privileged

2 from arrest during their attendance at elections, and in going to and returning therefrom.

Section 5. No elector shall be obliged to perform military duty on the days of election,
except in

2 time of war or public danger.

Section 6. No soldier, seaman or marine in the army or navy of the United States shall be
deem-

2 ed a resident of this State in consequence of being stationed at any military or naval place
within the

3 same.

Section 7. No person shall be elected or appointed to any office in this State, civil or
military,

2 who is not a citizen of the United States; and who shall not have resided in this State six
months next

3 before the election or appointment.

Section 8. No elector shall be entitled to vote except in the district or county in which he
shall

2 actually reside at the time of such election.

Section 9. No idiot or insane person shall be entitled to vote at any election in this State.

Section 10. The General Assembly shall have the power to pass laws excluding from the
rights

2 of suffrage persons convicted of infamous crimes.

Section 11. The General Assembly may prescribe by law an education qualification for electors,

2 but no such law shall take effect prior to the year of our Lord One Thousand Nine Hundred, and no

3 qualified elector shall be thereby disqualified.

Section 12. The General Assembly shall pass laws to secure the purity of elections, and guard

2 against abuses of the elective franchise.

Section 13. The General Assembly may pass laws allowing women the right to hold any school ** 185 **

2 district office, and vote at any school district election.

Section 14. The general election shall be held on the Tuesday next after the first Monday of No-

2 vember, until otherwise provided by law.

WALTER COOPER

Chairman of Committee ** 184 **

The President –

Place it on file

Mr Mills –

Mr President, Report of the committee on Executive Departments

The Secretary –

“Mr President, Your committee on Executive Department to whom was referred the communication of Horatio M. Maguire, suggesting that the titles of President and Vice President be substituted for Governor and Lieutenant Governor in designating the chief Executive officers of the State of Montana in the Constitution, beg leave to report that we deem the adoption of the titles suggested, inexpedient, those titles properly belong to the Chief Executive officers of the United States, and we believe it is a proper concession that they should be exclusive to them as distinguished from the chief executive officers of the several states. Even were they deemed technically superior to the titles now employed, it does not appear to your committee ** 185 ** that the fact would

compensate the disadvantages at the present time of a departure from established and universal usage

Very respectfully

Mills

Chairman Com. on Ex Depts.”

The Secretary –

“Mr President, Your committee on executive department respectfully submit the accompanying report for the consideration and action of the Convention, and will add that the judiciary committee to whom was referred the pardoning power by the rules of the Convention have provided Section 8 submitted herewith and request this committee to incorporate it with its report; it properly belonging to the executive department

Mills

Committee on Executive Department

Section 1. The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction; each of whom shall hold his office for two years, beginning on the first Monday in January

Next after his election: *Provided* that the terms of office of those chosen at the first election under this constitution shall begin on the day appointed for the first meeting of the Legislative Assembly.

The officers of the Executive Department, excepting the Lieutenant Governor, shall, during their term of offices, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this constitution or by law.

Section 2. The officers provided for in section 1 of this article shall be elected by the qualified

2 electors of the State at the time and places of voting for members of the Legislative Assembly,
and

3 the persons, respectively, having the highest number of votes for the office voted for, shall be
elected:

4 but if two or more shall have an equal and the highest number of votes for either of said
offices, the

5 two Houses of the Legislative Assembly, at its next regular session, shall forthwith, by joint
ballot,

6 choose one of such persons for said office. The returns of election for the officers named in
section

7 1 shall be made in such manner as prescribed by law, and all contested election of the same,
other

8 than provided for in this section, shall be determined by law. The Governor, Secretary of State
and

9 Attorney General, shall constitute the board of canvassers to canvass the vote for officers
provided for

10 in section 1, but neither of such officers shall participate in the action of the Board while
canvassing

11 the returns for an office for which he was a candidate.

Section 3. No person shall be eligible to the office of Governor, Lieutenant Governor or
Superin-

2 tendent of Public Instruction, unless he shall have attainnd [*sic*] the age of thirty years at the
time of

3 his election, nor to the office of Secretary of State, State Auditor or Treasurer, unless he shall
have

4 attained the age of twenty-five years, nor to the office of Attorney General unless he shall have
at-

5 tained the age of thirty years, and have been admitted to practice in the Supreme Court of the
State, ** 187 **

6 or Territory of Montana, and be in good standing at the time of his election. In addition to the

7 qualifications above prescribed each of the officers named shall be a citizen of the United States, and

8 have resided within the limits of the State two years next preceding his election.

Section 4. The Governor, Secretary of State, State Auditor, State Treasurer, Attorney General

2 and Superintendent of Public Instruction, shall, quarterly as due, during their continuance in office, re-

3 ceive for their services compensation, which, for the two terms next ensuing after the adoption of this

4 consitution, is fixed as follows. Governor, three thousand dollars per annum; Secretary of State,

5 twenty-two hundred dollars per annum; State Auditor, State Treasurer, Attorney General and Super-

6 Intendent of Public Instruction, two thousand dollars each per annum. The Lieutenant Governor

7 shall receive the same per diem as may be provided by law for the Speaker of the Legislative Assem-

8 bly, to be allowed only during the session of the Legislature. The compensations enumerated shall

9 be in full for all services by them respectively rendered in any official capacity or employment what-

10 ever during their respective terms of office. No officer named in this section shall receive, for the

11 performance of any official duty, any fee for his own use; but all fees, fixed by law for the perform-

12 ance by either of them of any official duty, shall be collected in advance and deposited with the State

13 Treasurer quarterly to the credit of the State. No officer mentioned in this section shall be eligible

14 to, or hold any other public office during his tenure of said office, except as provided in this constitu-

tion. The Legislature may by law diminish the compensation of any or all of the officers named in

this section, to take effect after the first two terms hereinbefore mentioned; but there shall be no in-

crease of such compensation except by amendment to this constitution – *Provided however*, the Legis-

lature may provide for the mileage of the Governor, Lieutenant Governor, Secretary of State, At- ** 188 **

orney General and Superintendent of Public Instruction, while traveling within the State in the per-

formance of official duty.

Section 5. The supreme executive power of the State shall be vested in the Governor, who shall

see that the laws are faithfully executed.

Section 6. The Governor shall be commander-in-chief of the military forces of the State, except

when they shall be called into the service of the United States, and may call out the same to execute

the laws, suppress insurrection, or repel invasion.

Section 7. The Governor shall nominate, and, by and with the consent of the Senate, appoint all

officers whose office are established by this constitution, or which may be created by law, and

whose appointment or election is not otherwise provided for, and may remove any such officer for in-

competency, neglect of duty, or malfeasance in office. If during the recess of the Senate a vacancy

occur in any such office, the Governor shall appoint some fit person to discharge the duties thereof

until the next meeting of the Senate, when he shall nominate some person to fill such office. If the

7 office of Secretary of State, State Auditor, State Treasurer, Attorney General or Superintendent of

8 Public Instruction, shall be vacated by death, resignation or otherwise, it shall be the duty of the

9 Governor to fill the same by appointment, and [sic] the appointee shall hold his office until his successor

10 shall be elected and [sic] qualified in such manner as may be provided by law. The Senate in deliberating

11 and acting upon executive nominations may sit with closed doors.

Section 8 The Governor, Secretary of State, and Attorney General shall constitute a board to be

2 known as the Board of Pardons. Said board, or a majority thereof, shall have power to remit fines

3 and forfeitures, and to grant commutations and pardons after conviction and judgment, either abso-

4 lutely or upon such conditions as they may impose, in all cases of offenses against the State, except ** 189 **

5 treason or conviction on impeachment The Legislature shall by law prescribe the sessions of said

6 board, and the manner in which applications shall be made, and regulate the proceedings thereon; but

7 no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision

8 of a majority of said board, after a full hearing in open session, and until previous notice of the time

9 and place of such hearing, and the relief applied for, shall have been given by publication in some

10 newspaper of general circulation, at least once a week for two weeks. The proceedings and decision

11 of the board shall be reduced to writing, and with their reasons for their actions in each case, and the

12 dissent of any member who may disagree, signed by them and filed with all papers used upon
the

13 hearing, in the office of the Secretary of State. The Governor shall have power to grant
respites or

14 reprieves in all cases of convictions for offenses against the State, except treason or
conviction on im-

15 peachment, but such respites or reprieves shall not extend beyond the next session of the
Board of

16 Pardons; and said board shall at such session continue or determine such respite or reprieve,
or they

17 may commute or pardon the offense, as herein provided. In cases of conviction for treason
the Gov-

18 ernor shall have power to suspend the execution of the sentence until the case shall be
reported to the

19 Legislature at its next regular session, when the Legislature shall either pardon or commute
the sen-

20 tence, direct its execution, or grant a further reprieve. He shall communicate to the
Legislature, at

21 each regular session, each case of remission of fine or forfeiture, reprieve, commutation and
pardon-

22 granted since the last previons [*sic*] report, stating the name of the convict, the crime of which
he was con-

23 victed, the sentence and its date, and the date of remission, commutation, pardon or reprieve,
with the

24 reasons for granting the same, and the objections, if any, of any member of the board made

25 thereto. ** 190 **

Section 9. The Governor may require information in writing from the officers of the
Executive

2 Department upon any subject relating to the duties of their respective offices, which
information shall

3 be given upon oath whenever so required; he may also require information in writing, at any time,

4 under oath, from all officers and managers of State institutions, upon any subject relating to the condi-

5 tion, management and expenses of their respective offices and institutions, and may at any time he

6 deems it necessary appoint a committee to investigate, and report to him upon, the condition of any

7 executive office or State institution. The Governor shall at the commencement of each session, and

8 from time to time, by message, give to the Legislative Assembly information of the condition of the

9 State, and shall recommend such measures as he shall deem expedient. He shall also send to the Leg-

10 islative Assembly a statement, with vouchers, of the expenditures of all moneys belonging to the

11 State and paid out by him. He shall also at the commencement of each session present estimates of

12 the amount of money required to be raised by taxation for all purposes of the State.

Section 10. He may, on extraordinary occasions, convene the Legislative Assembly by proclama-

2 tion, stating the purposes for which he has convened it, and when so convened it shall have no power

3 to legislate on any subjects other than those specified in the proclamation, but may provide for the

4 expenses of the session, and other matters incidental thereto. He may also, by proclamation, convene

5 the Senate in extraordinary session for the transaction of executive business.

Section 11. Every bill passed by the Legislative Assembly shall, before it becomes a law, be

2 presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law;
but

3 if he do not approve, he shall return it, with his objections, to the house in which it originated,
which

4 house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If
then

5 two-thirds of the members elected agree to pass the same, it shall be sent, together with the
objections, ** 191 **

6 to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of
the,

7 members elected to that house it shall become a law, notwithstanding the objections of the
Governor.

8 In all such cases the vote of each house shall be determined by yeas and nays, to be entered on
the

9 journal. Any bill which shall not be returned by the Governor to the Legislative Assembly
within

10 five days (Sundays excepted) after it shall have been presented to him, shall become a law in
like man-

11 er as if he had signed it, unless the Legislative Assembly shall, by their adjournment, prevent
its re-

12 turn in which case it shall be filed, with his objections, in the office of the Secretary of State,
within

13 five days after such adjournment Sundays excepted,) or become a law.

Section 12. The Governor shall have power to disapprove of any item, or items, of any
bill mak-

2 ing appropriations of money, embracing distinct items, and part or parts of the bill approved
shall be

3 law; and the item or items disapproved shall be void, unless enacted in the manner following:
If the

4 Legislative Assembly be in session, he shall transmit, to the house in which the bill originated,
a copy

5 of the item or items thereof disapproved, together with his objections thereto, and the items objected

6 to shall be separately [*sic*] reconsidered, and each item shall then take the same course as is prescribed for

7 the passage of bills over the executive veto.

Section 13. The Governor shall not, during his term of office, be elected a Senator to the Senate

2 of the United States.

Section 14. In case of the failure to qualify the impeachment or conviction of felony or infamous

2 misdemeanor of the Governor, or his death, removal from office, resignation, absence from the State

3 or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the

4 office, for the residue of the term, or until the disability shall cease, shall devolve upon the Lieutenant-

5 ant Governor. But when the Governor shall, with the consent of the Legislature, be out of the State ** 192 **

6 in time of war at the head of any military force thereof, he shall continue commander-in-chief of all

7 the military force of the State.

Section 15. The Lieutenant Governor shall be President of the Senate, and shall vote only when

2 the Senate is equally divided. In case of the absence or disqualification from any cause as applies to

3 the Governor or the Lieutenant Governor, or when he shall hold the office of Governor, then the pres-

4 ident *pro tempore* of the Senate shall perform the duties of the Lieutenant Governor until the vacancy

5 is filled or the disability removed.

Section 16 In case of the failure to qualify in his office, death, resignation, absence from the State,

2 impeachment, conviction of felony or infamous misdemeanor, or disqualification from any cause, of

3 both the Governor and Lieutenant Governor the duties of the Governor shall devolve on the president

4 of the Senate *pro tem*, until such disqualification of either the Governor or Lieutenant Governor, be

5 removed, or the vacancy filled; and if the President of the Senate, for any of the above named
6 causes, shall become incapable of performing the duties of Governor, this same shall devolve upon

7 the Speaker of the House.

Section 17. There shall be a seal of this State, which shall be kept by the Secretary of State, and

2 used by him officially. It shall be known as "The Great Seal of the State of Montana."

Section 18. All grants and commissions shall be in the name and by the authority [*sic*] of the People

2 of the State of Montana, sealed with the great seal of the State, signed by the Governor, and coun-

3 tersigned by the Secretary of State.

Section 19. The powers and duties of the Secretary of State, State Auditor, State Treasurer, At-

2 torney General, and Superintendent of Public Instruction, other than is herein provided, shall be as ** 193 **

3 prescribed by law

Section 20. An account shall be kept by the officers of the Executive Department and of all

2 public institutions of the State of all moneys received by them severally from all sources, and for

3 every service performed, and of all moneys disbursed by them severally, and a semi-annual report

4 thereof shall be made to the Governor under oath, they shall also, at least twenty days preceding each

5 regular session of the Legislative Assembly, make full and complete report of their actions to the

6 Governor, who shall transmit the same to the Legislative Assembly.

Section 21. The Governor, Secretary of State, and Attorney General shall constitute a board of

2 State Prison Commissioners, which board shall have such supervision of all matters connected with

3 the State Prison as may be provided by law. They shall also constitute a Board of Examiners, with

4 power to examine all claims against the State, except salaries or compensation of officers fixed by law,

5 and perform such other duties as may be prescribed by law. And no claim against the State, except

6 salaries and compensation of officers fixed by law, shall be passed upon by the Legislature without

7 first having been considered and acted upon by said board.

J. H. MILLS.

Chairman Committee on Executive Department. ** 194 **

Mr President –

The report of the Committee on finances

The Secretary –

“Mr President, your committee on finances of the State beg leave to present the following herewith on public indebtedness and respectfully ask its adoption

T. E. Collins
Chairman

Section 1. Neither the State, nor any county, city, town, township or school district shall lend or

2 pledge the credit or faith thereof, directly or indirectly, in any manner to or in aid of any person, com-

3 pany or corporation, public or private, for any amount or for any purpose whatever, or become respons-

4 sible for any debt, contract, or liability of any person, company or corporation, public or private, in or out of the State.

Section 2. Neither the State, nor any county, city, town, township, or school district shall make

2 any donation or grant to or in aid of or become a subscriber to or a shareholder in any corporation or

3 company, or a joint owner with any person, company or corporation, public or private, in or out of

4 the State except as to such ownership as may accrue to the State by escheat or by forfeiture, by opera-

5 tion or provision of law and except as to such ownership as may accrue to the State, or to any county,

6 city, town, township or school district or to either or any of them, jointly with any person, company

7 or corporation by forfeiture or sale of real estate for non-payment of taxes or by donation or devise ** 195 **

8 for public use, or by purchase by or on behalf of any or either of them jointly with any or either

9 them under execution in cases of fines, penalties or forfeiture of recognizances, breach of condition of

10 official bonds, or of bond to secure public monies or the performance of any contract in which they or

11 any of them may be jointly or severally interested.

Section 3. The Legislative Assembly shall not in any manner create any debtor, debts, liability

2 or liabilities which shall singly or in the aggregate with any previous debt or liability exceed the

3 sum of One Hundred Thousand Dollars (\$100,000) except in case of war, to repel invasion or sup-

4 press insurrection, unless the same shall be authorized by law, for some single object or work, to be

5 distinctly specified therein, which law shall provide ways and means exclusive of loans, for the pay-

6 ment of the interest of such debt or liability as it falls due, and also pay and discharge the

7 principal of such debt or liability within Twenty (20) years of the time of contracting thereof, and

8 shall be irrevocable until such time as the principal and interest thereon shall be paid and discharged,

9 but no such law shall take effect until at a general election it shall have been submitted to the people

10 and shall have received a majority of the votes cast for and against it at such election, and all monies

11 raised by authority of such law shall be applied only to the specific object therein stated, or to the

12 payment of the debt thereby created and such law shall be published in at least one (1) newspaper in

13 each county, if one be published therein, throughout the State for three (3) months next preceding the

14 election in which it is submitted to the people. The Legislative Assembly may at any time after the

15 approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal

16 the same.

Section 4. No county shall be allowed to become indebted in any manner, or for any purpose, to

2 an amount, including existing indebtedness, in the aggregate exceeding five percent on the value of

3 the taxable property therein, to be ascertained by the last assessment for State and county taxes, pre-

4 vious to the incurring of such indebtedness, and no county shall incur any indebtedness of liability for ** 196 **

5 any single purpose to an amount exceeding \$10,000, without the assent of the majority of the voters

6 thereof, voting at an election to be held for that purpose.

Section 5. No city, town, township or school district, shall be allowed to become indebted in any

2 manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceed-

3 ing three (3) per centum on the value of the taxable property therein, to be ascertained by the last

4 assessment for State and county taxes previous to the incurring of such indebtedness.

TIMOTHY E. COLLINS, Chairman. ** 197 **

Mr Calloway –

Mr. President, the committee on appointment and representation desire to report

The Secretary –

“Mr President, your committee on appointment and representation having had the subject under consideration, and after duly considering it beg leave to report the following and recommend its adoption

Calloway
Chairman

Section 1. Until otherwise provided by law, our representative in the Congress of the United

2 States shall be elected by the State at large. When a new apportionment shall be made by Congress

3 the General Assembly shall divide the State into Congressional districts accordingly.

Section 2. The General Assembly shall provide by law for an enumeration of the inhabitants of

2 the State at the first session held under this constitution, and as often thereafter as in the opinion of the

3 General Assembly such enumeration shall be necessary; and shall revise and adjust the apportionment

4 for Senators and Representative on the basis of such enumeration, according to ration to be fixed by

5 law.

Section 3. The first General Assembly held under this Constitution shall be constituted as follows:

2 The Senate shall consist of the same number of Senators and the House of Representatives of the ** 198 **

3 same number of Representatives as the Territorial Council, and the House of Representatives at the

4 time of the admission of the State into the Union, and for that purpose the Council and representative

5 districts, as then provided by law, shall constitute the Senatorial and Representative districts for the

6 election of Senators and Representatives of the first General Assembly under this constitution.

Section 4. From and after the first session of the General Assembly of the State, the Senate shall

2 consist of twenty-one members and the House of Representatives of forty-five members. And it shall

3 be the duty of the first General Assembly to apportion the State into Senatorial and Representative

4 districts accordingly. The Senatorial districts shall be numbered from one to twenty-one, if there

5 shall be so many, and the Senators elected from said odd numbered districts shall hold their office for

6 two years, and those elected from the even numbered districts shall hold their office for the term of

7 four years; and thereafter all Senators shall be elected and hold their office for four years. The term

8 of office for members of the House of Representatives shall be two years; provided, that there shall

9 be at least one Senator from each county.

Section 5. It shall not be in the power of the General Assembly to increase the number of Sena-

2 tors and Representatives to a greater number in the aggregate than one hundred before the year A. D.

3 1900; and when the number of Senators and Representatives shall be increased by the General As-

4 sembly the ratio as to Representatives and Senators contained in section four of this article shall be

5 preserved as nearly as practicable.

Section 6. When a Senatorial or Representative district shall be composed of two or more coun-

2 ties, they shall be contiguous and the district as compact as may be. No county shall be divided in

3 the formation of a Senatorial or Representative district.

J. E. CALLAWAY, Chairman. ** 201 **²⁴

Mr Brown-

Mr President, Report of the Committee on Miscellaneous subjects

The Secretary –

“Mr President, your committee on Miscellaneous subjects and future amendments to whom was referred proposition No 8, to be incorporated in the Constitution beg leave to report that they have considered the same and recommend the same be not adopted.

²⁴ Pagination error somewhere earlier, but in order to get more actual words down, ignoring for now ***

Brown -
Chairman

Mr McCormick –

Mr President I would like to ask that the clerk read the resolution so the convention may know what it is. For information

The President –

The secretary will read the resolution

The Secretary-

“Proposition to incorporate into the constitution. ** 202 ** “No executive, legislative, judicial, ministerial or other officer of this state, or of any legal subdivision district county or municipality thereof, shall during his term of office accept, receive, take the benefit of, or use, any gratuity or pass, issued by railroad corporation or any agent officer or employee thereof, or of any department thereof, or issued by any agent, officer or employee of any common carrier operated within this state, under the penalty of forfeiture of office and all the emoluments thereof. It shall be the duty of the legislature to enact appropriate and necessary laws to rigidly enforce the forgoing provision”

Callaway”

Mr Proctor-

Mr President, I move that the report of the committee be adopted by the Convention and save the expense of printing ** 203 **

The President –

You move a suspension of the rules.

Mr Proctor –

I don't believe it requires a suspension of the rules. My idea is to save the expense of printing

Mr Mills –

Mr President, I will ask if the subject is open for discussion

The President –

The question is open for discussion. Was the motion supported

Mr Toole –

I second the motion

The President –

The question comes under rule 23, all propositions and resolutions embracing matter to be incorporated in the Constitution reported by standing or select committees shall be placed on file in the order reported &c, it seems to me this would require a suspension of the rules ** 204 **

Mr McCormick –

I think not, sir. That rule is as to a report by a committee. This resolution was referred to the committee and they report it back with the recommendation that it be not incorporated. It seems to me the motion of the gentleman from Yellowstone is proper

The President –

If there is no objection the question will be presented to the Convention. It is upon the motion of the gentleman from Yellowstone that the report of the committee on miscellaneous subjects and future amendments be concurred in by the Convention. Are you ready for the question

Mr Eaton –

I would ask who the motion is supported by

The President –

By two gentleman

Mr Eaton –

I supported it for one, and I did so under a misapprehension ** 205 ** of the effect of the motion, and I wish to withdraw my support.

Mr Toole –

I seconded the motion.

Mr Mills –

Mr President, I hope the motion will not prevail, I think the substance of the resolution is good. It may be some of the subjects are not good, but certainly some of it is proper matter and I hope it will be allowed to go on the general file and be printed and come before the committee of the whole. I trust the motion will not prevail.

Mr Proctor –

Mr President, my chief reason for making the motion is that I think it is a matter for the legislature to act upon and not for this Convention, I don't think it should be incorporated into the Constitution ** 206 **

Mr Hedges –

Mr President, I move the report be referred to the Committee on legislative departments. It strikes me it got out of its place somehow. I think its reference to another Committee would be better, and get it into some proper form. I have no doubt there is matter in the resolution that the Convention would approve of if presented in the proper form and manner

Voice –

I second the motion

Mr Merriman –

Mr President, I would like to have the resolution read for information

Resolution read.

Mr. Toole –

Mr President, I am opposed to referring this resolution to any committee. The resolution is offered here and I apprehend many member ** 207 ** of the Convention can understand its purport at this time. The matter which is sought to be incorporated in the Constitution in my opinion is a matter entirely for the legislative assembly to act upon, and the author of the resolution seems to have also seen and considered that as he provides that suitable law shall be passed by the legislative assembly for the purpose of carrying into effect the object of the resolution. I think it is wholly for the legislature and no part of it can be incorporated into this Constitution and I don't know, Mr President, but what I object to it on another ground. That Coming as we do, asking for admission into the union, that it is showing, to some extent, a lack of confidence in the people of Montana, and the officers for whom this Constitution provides. It seems to me if we are in ** 208 ** the situation to be admitted; if we should be admitted in the Union, claiming the right to elect our own officers, we ought to evince some little confidence for the officers for whom we provide in the Constitution. It is a strike at the integrity and dignity of the officers provided for. But mainly, sir, I object to it because it is the business of the legislature, and we ought to guard against interferences of this kind in the Constitution, for the purpose for which this is intended.

Mr Vivion –

Mr President, as one of the members of the Committee reporting the resolution, I will state that we considered it as a matter wholly in the province of the legislature, and we considered further that the restrictions that have been put upon corporations here, or on officers of the Territory as sufficient. ** 209 ** It seems to me that the resolution as offered, although we may approve of it and believe in its subject matter, yet, it is within the province of the legislature and is not necessary to be incorporated in to this Constitution, therefore we reported it unfavorably more particularly for those reasons.

Mr Callaway –

Mr President, it is evidently a matter that this Convention can comprehend without the mistaken hallucination indicated by gentlemen who have spoken as to the purpose of the resolution sought to be incorporated in the Constitution by the standing resolution

In reply to the honorable gentleman from Lewis and Clarke and other gentleman who spoke of this being exclusively for the legislative assembly, I would ask them if upon the same proposition, if all the articles, provisions and resolutions of the ** 210 ** Constitution cannot in the same sense be called legislative?²⁵ One of the gentlemen, who talks of this, Mr Toole, of Lewis and Clarke, as being inconsistent and visiting the stigma of want of integrity upon officers, I would ask him in reply if from every moderation and restriction upon all officers named in the Constitution there would not arise the same doubts as to their integrity and character. Now, sir, to leave this to the legislature is nothing less than a farce. It is worse than a begging of the question, because if there is no purpose whatever to be served here; if there is no reason for restriction, to leave that to the legislature, is in the end to leave it beyond the power of the legislature and place it where it will be influenced by the very corporations unconscionable as do business and now operating within the Territory. ** 211 ** leave the matter just exactly where we started without any remedy whatsoever. I will add sir, and say to the gentlemen of the Convention that the main object of the resolution which I had sought to be incorporated into the Constitution was to remove our people and officers as far as possible from the influence of overshadowing corporations which will come to the Territory or have come and are now here. We know Mr President and gentlemen of the Convention, as a matter of history, that in several of the states of the Union, that the railroads and other strong corporations have elected their senators, have elected their governors and have run the revenues of the state. When you look to day at the Northern Pacific railroad company with its eight hundred and twenty two miles of line, struck from east to west across the Territory ** 212 ** and with a land grant entirely in itself, coming here with all power to control, as far as money can do it, our legislatures, and who will so control them if we don't restrict them and our officers. If we don't restrict them they will come to our

²⁵ Symbol is actually an underlined 3 (3), but I could not find a quick answer to what that was and the context tells me it COULD be a question mark.

legislative halls and dictate who shall be our senators. As to that we can only be guided to day, by the history of other states where the strong corporations dictate who shall be the senators and who shall go to Congress. I propose to limit their power and strike at their influence whether it goes to the Democratic or Republican party, or other parties that come into existence in the Territory. In addition to that, sir, (I don't care who our governor may be, who our senators may be, that we cant control. I don't propose ** 213 ** that, or who the attorney general may be, who the legislators may be) if they travel through the Territory on passes issued by a railroad company or stage company, do you suppose that wont have some influence in the minds of those men? Why will these companies – Why have they, and why do they, throughout the United States issue their free passes to gentlemen? They don't give them to the common farmer or laborer, except he is shipping property over their railroads, and they make him overtures in order to encourage him to do it again. And they do it to men who hold the executive power of the State, and vote in legislative assemblies. They don't issue them as a matter of courtesy but as a matter of business and they hope to get value received for their favors. ** 214 ** And I will state to the gentleman who made this motion, and I will inform him now, that he cant get rid of this proposition at this time in this way. I will bring it before the Committee of the whole. I will ask to have it incorporated in the Constitution before we are through. Although it comes to its last passage it shall be done and I know how to do it. I will say if this proposition is not engrafted into other propositions so as to restrict railroads and officers, form the influence that we know they govern and control, (they have done it and will do it again). I say unless this is covered by some other proposition I will push every member of this Convention to his vote of aye or no and his reasons therefor. Sir, again, we have said in times past and have, striven to separate ** 215 ** church and state, and which has succeeded with the American form of government. I propose to leave each branch as independent as may be but I want to leave them independent of this influence which may bring a suspicion against them or their integrity. I would rather not the governor of my state should ride upon a pass and the people criticize him for it. You and I and all people will be more respected if he pays his fare and does not ride upon a corporation's pass

Applause.

Mr Pemberton –

Mr President, I hope the motion to concur in the report of the Committee will be carried. I take this position, sir, in full view of all opposition to it. I take this position without any fear of going on the record. ** 216 ** This resolution in my opinion had its origin in one of two sentiments. It is either the production of the most insupportable nonsensical demagoguery that ever came into the brain of a politician or else it comes from a mistaken, libelous idea, that all men in this community or in all communities of the land today, who are of sufficient importance to recommend them to the public offices of the

country, are absolutely corrupt and fit subjects to be bribed. I don't believe, Mr. President, that it follows as a matter of course that a man because he is of sufficient importance and intelligence; because he is intended to serve the community of Montana, or elected to fill a public office, that that man is necessarily a bought up scoundrel. It don't pass with the men of Montana Territory, ** 217 ** that brave men who have come out to these mountains and valleys as pioneers of the greatest country the world ever saw, are so miserly, so cheap that they can be bought or bribed by a little insignificant pass on a railroad. Where is the public morality? Where is the patriotism and virtue of the people upon whom depend for all days to come, for all futurity, the political influences of Montana? Has it come to this that the patriotism, the intelligence, the public morality, the stronghold and liberty of the people can be purchased – purchased in the market for a pass on a railroad? Mr President, I believe sir, that it is a slander, to put this in the Constitution of the state of Montana. A libel on the virtue and patriotism of the people I don't believe that the people of this Territory or of this state, when it becomes a state, will elect a man to be ** 218 ** governor of the people who could be bought for a pass on a railroad. I don't believe the man could be elected to the legislature who would sell his vote as United States Senator for a ticket on a railroad. No sir. We want more money than that, if we sell

(Laughter)

Mr. President, we have, or will have on our statute books a law in relation to bribery. There will be laws upon our statute books to punish officers for permitting themselves to be corrupted. I suppose we will. It is possible that Montana may have, in the course of its history, some corrupt officers. It is possible some man may get into the legislature and sell his vote, or who may be bribed but I don't believe it will ever occur in the whole history of Montana clear down to the time when Gabriel shall toot his horn, that a man ** 219 ** will sell his vote for a pass on a railroad, or that a man will sell anything for a pass on a railroad. Now, I propose that any time a railroad officer runs after me with a pass, to take it. (Laughter) I don't care whether I am an officer or a private individual. Unless you place that stigma and libel in the Constitution I will take it. If you put that in the Constitution as a matter of course if I was an officer I wouldn't. Do the men who vote for this thing admit that it is dangerous to leave them exposed to the influence of a pass? (Laughter). You know yourselves, gentlemen, you ought to know yourselves, I stand here before this convention and declare, that I don't admit, and I will not admit by my vote that there is a particle of danger of any ** 220 ** railroad buying me with a pass, and I don't want such a thing as that to come into this Constitution. We have the Constitution of other states, I will admit; we have that sort of a proposition in one of the states, but, sir, it has been placed there by considering the sentiment that has got abroad that all men in the country have become corrupt. I don't believe it. I don't believe the public men of today as a general rule are corrupt. I don't believe it follows that because a

man is elected to office that he is there to sell himself. I don't believe that, Mr President. If so then indeed a man need not be a prophet who can see in the near future the decay and downfall of all of our institutions. If this country is to be perpetual ** 221 ** if our institutions are to be immortal and go down to future generations, it must be done by the virtue, intelligence and patriotism of the people. It has not come to pass in these days of enlightenment, of education and of news papers, when the whole land is in the blaze of the light of intelligence, it certainly has not come to pass that the people are so corrupt as to place such constitutional restrictions on the future law makers of our land. Sir, it is not necessary to tie the people by their necks with such ropes as this to keep their hands off of such insignificant actions. I believe in the virtue of American politics and morality. Such things as this are not necessary. Sir, it is a libel on the American character. It is a libel on American intelligence. It is a base slander on the men who ** 222 ** travel this Territory today, and who will control its future. I believe the men of today are determined, especially the people of Montana, are determined to take hold of the elements of government of good government, and would then unite such form as to insure the happiness and prosperity of this generation and of the generations to come. I believe the people of Montana are determined to take hold of this great work of government, to take hold of this great land, and this question of civil liberty and push it forward until this people shall realize the greatest, the grandest destiny ever witnessed on God's green earth and such a people cant be purchased by a ticket on a railroad, and they know that it is slander to put such a stigma on the law.

Applause. ** 223 **

Mr Callaway –

Mr President, I move the gentleman from Silver Bow be excepted from the operation of the provision

Mr Pemberton –

Second that motion.

Laughter.

The President –

The question is upon the –

Mr Stephens –

Mr President, I for one, as a member of this Convention have no desire that this subject shall pass without having a few words to say. And I hope I will be able to say it in a very few words. I believe Mr President, that there are only two classes of people in this world.

One is man and the other woman. I believe, Mr President, all society is made up of a conglomeration of powers and restrictions. I believe, sir, if every man was allowed to do just as he pleased and that ** 224 ** there were no restrictions by law or by the rules of society, placed upon his civil conduct, that we would be worse than savages. I believe all mankind, ought to some extent and in a manner be restricted. I believe if it was not for the restrictions cast upon us we would become barbarians. Lack of no restrictions upon legislative power. Why, sir, the Constitution of the United States by its restrictions have many Congressional acts. There are no less perhaps than thirteen restrictions against the power of Congress. Why, sir, it is a plain necessity that not only individuals but also legislative bodies shall be governed by restrictions, by the experience of all Americans they are thought to be the best for the honesty of all parties. I don't stand here and say, Mr President, that no ** 225 ** man shall accept a pass from a railroad company, don't wish to do that, because I don't see how we can lay down a principal or guide to which there shall be no exception, but we can establish a principal or general rule. As a general rule I say restrictions are wrong because it is wrong in principal. And when I find a thing wrong in principal I vote against it. I say, sir, the principal of giving passes is wrong for many reasons. It is a wrong against the railroad company itself. It is wrong to bring up such a system or state of affairs, that every man who happens to be an officer under a railroad and has a friend to not be able to refuse that friend a pass. Suppose I am in close friendship with an officer of a railroad company, and ** 226 ** we get into conversation together and I want to go from Heron to Helena. He feels it a delicacy on his push to offer me a pass. He knows I know he has no pass to give me. Why should the railroad company give me a pass? What railroad influence have I? Would any corporation give me a pass? I, situated as a private man attending to my own business know nothing about these corporations. They know nothing about me. Why should they give me a pass? Now, sir if I am an officer why should I receive a pass? Suppose I am a member of this Convention, what right in principle have they to offer me a pass without knowing me? Do they know me any more because I am a member of the State Convention? There I ask in all reason ** 227 ** would it be proper to say Stephens has been elected a member of the Constitutional Convention of California. There is no per diem or fees for him, he will have to pay his own fare. I think it is right Stephens should be paid out of the railroad funds, and they give me a pass. I am speaking of these things as illustrations only. I don't suppose any member of this Convention would be influenced in principal by a pass, but a time will come. A time will come, and if you tell me, no this matter cant be settled in this Convention, I assure you the time will come in the legislative halls when you will find the offices crowded, by exponents of this proposition. To day we are assembled here in peace. Look at the tranquility of we. Where is our lobby? We have ** 228 ** no interests working upon us. We can speak of and discuss this thing now without the influence of a lobby. All we have to do is to be guided by reason and good sense. We are not guided by anything else at all. Now, I say, sir, if this thing goes to the legislative

halls I see that we would be surrounded by influences that we have not here. I say it would be better for everybody if the question should be settled now and here. All that is necessary is this. If any gentleman here knows in the secret of his heart that this thing is wrong in principle, and having settled that in his mind if he is true to himself he will settle the question in the Constitutional convention without waiting for it to come before the legislature. Sir, I don't wish to inspect the motives of any gentleman ** 229 ** all I ask is that when bodies of men come together for the purpose of deliberation that they do that which is right. Consider what we do now will cast reflection upon this side of an organization or that side. I hope the gentlemen will cast aside any such ideas. The question is not what tendency it will have. The question is what is right. I believe it is right to keep away temptation from the members of the legislature hereafter, and also to keep these organized bodies such as railroad companies from working their influence. Now sir, another thing will happen if you except out, what is given away if you keep this influence away from railroad companies whereby it is not necessary to give passes to persons you will find they will gain that much money. ** 230 ** They will be saved the expense of giving passes and have their profits and they will be enabled to give cheaper freights to people. Because the leak caused by passes is stopped they can put down their freights. The people are better off, the railroad company is better off, and they are not bothered by people asking for passes. Everyone will be benefited because the question is taken away from them entirely. I hope, Mr President, and trust the resolution to concur with the report of the committee be not adopted when the matter comes to be finally disposed of.

The President –

The question is on the reference of the whole matter to the judiciary committee

Mr Dixon –

I call for the ayes and noes. ** 231 **

Mr Callaway –

I second the call.

The President –

The ayes and noes will be taken.

Mr Dixon –

Mr President, before the vote is taken I move to amend the motion by adding that the report of the committee be ordered printed and postponed until 2 oclock on Saturday afternoon

Seconded

The President –

I will state that a motion to amend at this time is not in order. A motion to recommit would be in order

Mr Callaway –

Mr President, would it be in order to amend by striking out of the motion judiciary committee and inserting committee on miscellaneous subjects

The President –

That motion would be in order ** 232 ** or you can amend a motion to commit by referring it to another committee.

Mr Collins –

Mr President, I move its reference to the committee on miscellaneous subjects and future amendments, and they be requested to report by different sections

The President –

Will the gentleman put his amendment in writing

Mr Pemberton –

I would like to inform the gentleman that the committee on miscellaneous subjects have already reported the matter

Mr Collins –

Then I withdraw my amendment

Mr McCormick –

What is the question

The President –

Upon the reference of the matter to the committee on judiciary ** 233 **

The President –

The subject matter of the resolution only is to be referred – The ayes and noes will be called

The roll call resulted as follows

	Aye.	No.
Abascal	/	
Burleigh		/
Browne		/
Collins	/	
Carroll		/
Callaway	/	
Catlin		/
Cooper	/	
Dixon		/
Daly		
Douglass	/	
Eaton		/
Eddy	/	
Ferris		
Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell		/
Haase		
Hundley		/
Langhorn		/
Medhurst		/
McCormick		/
McSorley	/	
Merriman	/	
Mills	/	
Maloney		
McClintock		/
Napton		
Pease	/	
Pemberton		/
Proctor		/
Powers	/	
Robinson		
Smith		/
Savage	/	
Steell		

Stephens	/	
Toole		/
Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	
	17	20

The President –

Seventeen have voted in the affirmative and 20 in the negative. I declare the motion lost.

Mr Pemberton –

Mr President, I call for the motion to concur.

Mr President –

The question is no on the original motion, that the convention concur in the report of the committee on miscellaneous subjects and future amendments

Mr Collins –

Mr President, if we reject it at this time could it be called up in the Committee of the whole. The rules say everything of that class shall be referred to the Committee of the whole. Now I would ask if this report is concurred in ** 235 ** could we at the proper time, when the report of the Committee on Miscellaneous subjects comes up, in the Committee of the whole could we then present this question and have it voted upon there

Mr Pemberton –

Yes.

Mr Vivion –

For the information of the gentleman I will say this is reported separately. The opposition is offered by the gentleman from Madison

The President –

It is the opinion of the chair that the matter should have properly gone to the Committee of the whole. That is the reason I raised the question, but it seemed to the chair without a suspension of the rules this question could not be considered. But some of the gentlemen seemed to have an opinion otherwise, hence, I proposed the question. If it is decided ** 236 ** now that the

report of the Committee be concurred in, I think it could not be considered in the Committee of the Whole unless incorporated in the motion now

Mr Collins –

Mr President, I move it be placed upon the general file in the same condition as reported by the Committee on miscellaneous subjects and that it be referred to the Committee of the whole

Seconded

Mr McCormick –

I desire to correct the chair in one respect. I understand from Mr Vivion that the Committee to which the resolution was referred have already submitted their report to the Convention and that report is on file. What I desire to say is this, when a report of a committee comes up in the Committee of the whole, then the resolution offered by the gentleman from Madison, can be moved to be incorporated into ** 237 ** the Constitution by the gentleman from Madison. No other gentleman in the Committee of the whole can move it be incorporated. It can be voted on in the Committee of the whole and after the Committee of the whole have acted on it it can be acted on by the Convention. Now it seems to me the report can be voted on to be adopted or rejected and that is the whole question before the convention.

The President –

The question is on the motion to refer it to the Committee of the whole.

Mr Toole –

Mr President, I desire simply to say, that with reference to rule 27, it seems to me the motion is out of order. A motion is not necessary to go to the Committee of the whole. I concur with the view of the Chair that there is no distinction to be ** 238 ** made when a matter goes to the Committee.

The President –

I will ask if the motion to recommit was supported

Voices –

Yes. Yes.

The President –

The question is on the motion to recommit the subject to the Committee of the whole

Motion put and carried.

The President –

The resolution will be placed on the file and referred to the Committee of the whole

The Secretary –

“Mr President. Your committee on Rights of Suffrage to whom was referred Mr Stephens proposition that no distinction should be made on account of sex, respectfully report that in the opinion of your Committee it is not expedient to grant to women general suffrage ** 239 **

Respectfully submitted
Cooper
Chairman

Mr Pemberton –

Mr President, the Committee on miscellaneous subjects made two reports, one only has been read.

The President –

The other was overlooked

The Secretary –

“Mr President, your Committee on miscellaneous subjects beg leave to report the accompanying article which they recommend be incorporated in the Constitution

Brown
Chairman

Forest Fires

The General Assembly shall enact suitable laws to prevent the destruction by fire from railroad,

2 locomotives, or any other cause, and keep in good preservation the grasses and forests upon the lands

3 of this State, or upon the lands of the public domain, the control of which may be conferred by Con-

4 gress upon this state.

COOPER, Chairman ** 240 **

The President –

Place it on file

Mr Toole –

Mr President, as chairman of the Committee on privileges and elections I would like to ask for information. The Committee, as I understand it has nothing to do with the Constitution at all. Their duties are simply to pass upon such members as present themselves as members of the Convention. That was the view of it taken by the Committee on rules at the time the Committee was formed. There has as yet been no business, and I will state I have not called the committee together.

Mr Langhorne –

That Committee can report at any time as I understand it

Mr Langhorne –

Mr President, I ask leave now to offer the report of the Committee on legislative ** 241
** department

The President –

If there is no objection the report will be received

Mr Proctor –

Mr President. I move the rules be suspended and the reading of the report be dispensed with, and that the report go on the general file and ordered printed

Seconded and the motion being put received the vote of all members of the Convention viva voce, except Mr Stephens, who voted no.

The President –

I believe that requires a unanimous vote

Mr Toole =

Two thirds

Mr Burleigh –

The reading of a report of a committee to be dispensed with requires unanimous consent.

Mr Toole –

Yes, that's so.

The President –

The gentleman is correct and I declare the motion lost. ** 242 **

The Secretary –

“Mr President, your committee on legislative departments beg leave to make the following report and recommend its adoption as a part of the Constitution Convention

S.W. Langhorne
Chairman ** 243 **

Mr Pemberton –

Mr President, I move we adjourn until two oclock this afternoon

Seconded

The President –

I have a telegram here in which Mr Ferris asks leave of absence until Monday on account of sickness in his family. If there is no objection he will be excused. I would like also to announce the Committee to prepare the address setting forth the more salient features of the Constitution. On the Committee I will appoint, Messrs. Toole, Hunt, Cooper, Pemberton and Callaway.

Motion to adjourn put and carried and the Convention was by the President announced as adjourned until two oclock. ** 244 **

Afternoon Session

Convention met pursuant to adjournment.

President Clark in the chair

Roll call Quorum present

The Secretary commenced reading the report of the Committee on Legislative Department.

On motion of Collins the rules were suspended and the further reading was dispensed with and the report ordered placed on file.

The report of the Committee on mining and water rights was read and ordered placed on file

The report of the Committee on Agriculture, Manufacture &c was read and ordered placed on file

The following resolution was introduced by Power

Resolved that no member be allowed to speak over five minutes on any proposition unless a member yields his time for that purpose.

Power. ** 245 **

On motion of McCormick the resolution was referred to the Committee on rules

The following was introduced by Mills

“Resolved, that it shall be the duty of the assistant Secretary of this Convention to each day transmit by mail to each newspaper in Montana Territory a copy of each proposition or report for incorporation in the Constitution of Montana, which shall have been printed and purchased to the convention, and that the secretary of Montana be requested to furnish stamps for the postage on the same.

Mills”

On motion of McCormick the resolution was adopted

Mr Toole offered the following resolution and moved its adoption

“Whereas, It is the sense of the Convention that under the joint resolution calling this ** 246 ** Convention, the right is reserved to it to contract its own printing and that the Secretary of the Territory is required to carry out the request of this Convention in that behalf. Therefore, be it resolved that the Independent Publishing Company is hereby designated as the proper company to do the printing of this convention and that the Secretary thereof forthwith notify the Secretary of the Territory of the action of the Convention

Toole”

Mr Hunt moved to lay the resolution on the table. The ayes and noes being called the motion was lost by the following vote

Ayes – Burleigh, Callaway, Catlin, Dixon, Douglass, Eaton, Fergus, Green, Hunt, Hedges, Medhurst, Merriman, Mills, Pease, Power, and Savage – 16

Noes- Abascal, Brown, Collins Carroll, Cooper, Eddy, Howell, Hundley, Langhorne, McCormick, McSorley, Maloney, Pemberton, Proctor, Smith, Stevens, Toole, Waterbury and Mr President – 19

Mr Pemberton moved to suspend the rules and make the resolution the special order for tomorrow at eleven oclock am, which motion was lost.

On a call of the ayes and noes the resolution as introduced was adopted by the following vote

Ayes – Abascal, Brown, Collins, Carroll, Cooper, Eddy, Howell ** 247 ** Hundley, Langhorne, McCormick, Maloney, Pemberton, Proctor, Smith, Stevens, Toole, Van Gasken, Waterbury, and Mr President – 19

Noes – Burleigh, Callaway, Catlin, Dixon, Douglass, Eaton, Fergus, Green, Hunt, Hedges, Medhurst, McSorley, Merriman, Mills, Pease, Power and Savage - 17

On motion of McCormick the convention adjourned until 10 oclock tomorrow morning. ** 248
**²⁶ ** 249 **

Eleventh Day = January 24 1884

Morning Session

Convention called to order at ten oclock

President Clark in the chair

Mr McSorley -

Mr President, Mr Merriman desires to be excused until tomorrow morning.

Mr Toole –

Mr President, Mr Maloney has been called home on very urgent business and asks that a leave of absence be granted him until Tuesday morning.

The President –

If there is no objection the gentlemen will be excused.

Roll call. Quorum present as follows: ** 250 **

	Present	Absent
Abascal		/
Burleigh	/	
Browne	/	
Collins	/	
Carroll	/	
Callaway	/	
Catlin		/
Cooper		/

²⁶ This page is the image of a folder labeled Proceedings. 11th day, Jan. 24, 1884.

Dixon	/	
X Daly		
Douglass	/	
Eaton	/	
Eddy	/	
Ferris	/	
Fergus	/	
Green	/	
Hunt	/	
Hedges		/
Howell	/	
X Haase		
Hundley	/	
Langhorn		/
Medhurst		/
McCormick	/	
McSorley	/	
X Merriman		
Mills	/	
X Maloney		
McClintock	/	
X Napton		
XPease		/
Pemberton	/	
Proctor	/	
Powers	/	
X Robinson		
Smith	/	
Savage	/	
X Steell		
Stephens	/	
Toole	/	
X Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	

X absent and not refuted. ** 251 **

Journal of yesterday read and approved.

Reports of committees, called for by the President under the order of business

Mr Langhorne –

Mr President, I will ask if the report of the Committee on legislative departments has been read and placed on file

The President –

The reading of the report was dispensed with by order of the Convention.

Mr Dixon –

Mr President, the report of the Judiciary Committee

The President –

Before reading the report, I desire to state to the Convention that there are still two vacancies in the Standing Committees, one in No 3 on Legislative Departments and one in No 10 on City and Town Organization. I will appoint Mr Savage to both of these Committees.

The Secretary –

“Mr President, your committee on Judiciary and Judicial Departments herewith submit their report to the ** 252 ** inserted in the proposed Constitution and recommend its adoption

W. W. Dixon
Chairman

Mr Proctor –

Mr President I move the rules be suspended and the reading of the report be dispensed with

Mr Pemberton –

I would like to ask if there are not two reports from the Judiciary Committee

Mr Dixon –

Yes sir, two, a minority report and a majority report

Mr Pemberton –

I move the reading of both reports be dispensed with

The President –

The question is upon the suspension of the rules to dispense with the reading of the two reports

Motion put and carried unanimously

The President –

Place both of them on file to be printed

Mr Dixon –

There is also another report ** 253 ** by the judiciary committee on some other matters referred

The Secretary –

“Your committee on Judiciary and Judicial Departments, including pardoning power, to whom was referred resolution No 1. An article on the Judiciary Resolution No 3., as to disclosures by grand juries, Resolution No 4, as to abolition of grand juries &c and proposition No. 10, proposing that no incumbrances shall be created upon homesteads &c respectfully report that they have considered said resolutions and proportion and hereby report the same back to the Convention

Your committee have incorporated into the Judiciary Article for the Constitution reported by them, so much of the resolution No 1, as they considered advisable and recommend their report as a substitute for said resolution.

Your committee are of opinion that the matter embraced in resolution No 3, although perhaps a wise provision, would more properly be embraced in a law than in the ** 254 ** Constitution, and therefor recommend that said resolution be not made part of the Constitution.

As to Resolution No 4, your committee are of opinion that the matters to which it relates do not come properly within the province of the Judiciary Committee, but within that of the Committee upon Preamble and Bill of rights, and we recommend said resolution be referred to said last named Committee.

Your committee recommend that resolution No 10, be not incorporated into the Constitution

Your Committee further report that they have had under consideration the matter of the pardoning power referred to them, that they are of the opinion that said matter would be more properly included under the Article of the Constitution relating to Executive Departments, that such article has been reported by the committee upon that subject, and contains a section, No 8. Providing for the exercise of the pardoning power and regulating ** 255 ** the exercise thereof, that your committee have examined said article and approve the same, and recommend that said section be adopted as part of the Article on Executive Department. All of which is respectfully submitted

W W Dixon

Chairman Committee on Judiciary

Mr Langhorne –

Mr President, I move the adoption of the report

Seconded and carried

Mr Burleigh –

Mr President, what is the order the convention is now under

The President –

The order is the introduction of resolutions and propositions relating to the Constitution

Mr Proctor –

Mr President, I believe there is a special order for eleven oclock today

The President –

There was a motion to that effect but it was not carried. ** 256 **

The President –

The convention will now resolve itself into a committee of the whole for the considerations of general orders. Mr Langhorne will you take the chair

Convention resolved into a committee of the whole, Mr Langhorne in the chair ** 257 **

Mr Chairman –

The committee will now come to order. What is the pleasure of the Committee? Shall we take up the files in the order in which they are printed?

Mr McCormick –

Mr Chairman, I move you we proceed with General file No. 1. On City-County and Town Organizations

Seconded

Mr Vivion –

I think the report of the Committee should not be taken up now, for the reason that they have made two reports and they have not been printed yet. The reports will necessarily be complicated a little, and should be taken up together.

Motion to take up General File No 1. Carried

Chairman –

What is the pleasure of the committee in the manner of procedure?

Mr Toole –

I believe the rules provide that the files shall be taken up and disposed of by sections. I refer to rule no 5.

Chairman –

Article 1

Section 1. The several counties of Montana, as they now exist, are hereby declared to be the counties of the State.

What is your pleasure, gentleman with this section?

Mr McCormick –

Mr Chairman I have an ** 258 ** amendment, I move to amend the section by adding thereto the following, "Except that portion of Missoula County, lying east of the Rocky Mountains, and that shall be attached to and become part of Choteau County.

Mr Clark –

I second the amendment.

Mr McCormick –

It is my understanding that during the organization of the Counties in 1873, I think, that the north and south boundary lines of Missoula County were made to follow a certain parallel of latitude until it reached the summit of the Rocky Mountains and continued on that parallel latitude until it reached the British Possession. It can be seen there would be a considerable portion of the territory, lying east of the Rocky Mountains that would be in Missoula County. Now, sir, I desire that portion be attached to Choteau County, because it is so far removed from Missoula, that if any trouble arose in that portion of the County it would be a very great expense to trace up criminals and prosecute them. A time may come when there will be a considerable population in that part of the County, and it is nearer to Choteau than to Missoula. That is my object in offering the amendment.

Mr Proctor –

Mr Chairman, I hope the amendment ** 259 ** will not be adopted. It is a matter we have nothing more to do with than we have with the District of Columbia, not a bit. These matters are regulated by the legislative and if we commence on this we will have to rearrange and establish every county in the state. I am opposed to everything that tends towards legislation on the part of the Convention, and if such things as this are to be

adopted we will have a constitution so long that it will never be adopted in the world. We have no right to interfere with the boundaries. The schedule will provide, and I believe the report has already been made, that all laws in existence or in force in the Territory, shall be the laws of the state until repealed or changed by the legislature, and as I said before, if we adopt this amendment we will be establishing a precedent that will probably lead to the defeat of the Constitution when submitted to the people.

McCormick –

Mr Chairman, I undertake to say that the convention has not only the right to change the boundaries of the counties, but has the right to change the boundaries of the Territory, and as far as I am concerned I am decidedly in favor of changing the boundary lines of the Territory so as to embrace within ** 260 ** the limits of Montana, half of the Pen D.Orielle lake now in the Territory of Idaho, but as far as this amendment is concerned there can be no objection by the people of Choteau to taking his portion of Missoula County. It is a matter of convenience and economy that the people of Choteau should have that portion of Missoula. It is very proper that the Convention should fix the boundaries of the Counties as far as the people are concerned.

Mr Pemberton –

Mr Chairman, I think the amendment of the gentleman from Missoula ought not to be incorporated in the Constitution. It is a matter of pure legislation and there is no necessity for placing it in the Constitution. If it is desirable, the people of Choteau and Missoula counties can have their boundaries of their counties changed by any session of the legislature, whether it is a Territorial or state legislature, and I hope the gentleman will not insist upon his amendment.

Mr Vivion –

Mr Chairman, I hope the amendment will not be adopted, for the reason that the power to change Counties and County boundaries is provided for in the report of the Committee on schedule, and it is left entirely to the legislature. If we are going to adopt amendments like this we will get the Constitution into a ** 261 ** terrible muddle, and I am opposed to it.

Mr McCormick –

It seems to be the sentiment of the Convention that the amendment shall not prevail and that it shall be left to the legislature. Therefore I beg leave to withdraw my amendment, with the consent of my second.

Mr Pemberton –

I offer an amendment to section one.

Chairman –

“Amend Section 1, by striking out the word ‘now’ in line one, and insert after the word “exist” the words, “at the time of its admission as of State into the Union.”

Mr Pemberton –

The amendment will make the section read, “The several counties of the Territory of Montana as they exist as the time of its admission as a state into the union are hereby declared to be the counties of the state”

Mr Dixon –

I move to amend the section by adding, “until otherwise changed or established by law,” after the word state.

Mr Callaway –

Second the amendment.

Carried

Mr McCormick –

I move the adoption of the Section.

Seconded. ** 262 **

Mr Collins –

I call for the reading of the section as amended

Chairman –

(reads) “The several counties of the Territory of Montana, as they exist at the time of its admission as a state into the Union, are hereby declared to be the counties of the State, until otherwise changed or established by laws.”

Mr Pemberton –

The section would read better if the word “shall” were in between “they” and “exist”, as “as they shall exist at the time of its admission as a state into the Union”

Chairman –

I have put it in.

Motion to adopt carried

Chairman –

(reads)

“Section 2. The General Assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided for by General law, and no county seat shall be removed, unless a majority of the qualified electors of the county, voting on the proposition at a General election, vote therefor; and no such proposition shall be submitted oftener than once in four years, and no person shall vote on such proposition who shall not have resided in the county six months, and in the election precinct ninety days next preceding such election.

Mr Collins –

I move to amend by striking out the words “a majority” in line 3, and inserting “two-thirds”

Seconded and lost by a tie vote ** 263 **

Mr Hedges –

I would like to make the inquiry whether “ general assembly” is the proper term to me there?

Chairman –

That is the way the committee reported it.

Mr. Smith –

Mr Chairman, an amendment.

Chairman –

The gentleman from Beaverhead moves to amend by striking out the word “general” in line 1, section 2, and inserting in lieu thereof the word “legislative”

Mr Proctor –

Mr Chairman, if it is in order now, I move to amend or suggest this propositions, that when the committee rise the chairman recommend that whenever the words “general assembly” appear in any of the reports of committees, they be stricken out and “legislative assembly” be inserted instead, so that it may be changed in all reports without having to be amended in each instance

Mr McCormick –

Second the amendment

Mr Vivion –

I am opposed to that motion, for the reason that there is but one general assembly for the introduction and passage of bills in the Territory, and that consists of an upper and lower house, and I think the term “general assembly” includes the whole thing better than “legislative assembly” Of course ** 264 ** “legislative assembly” includes the same officers and same bodies, but I think “general assembly” is the proper term to use, and I am approved to the amendment.

Mr Callaway –

I am with the gentleman from Gallatin, on the proposition, but I don’t know whether it properly comes up at this time or not, but as the matter is before the committee I desire to say that the term “general” in my understanding is proper. As Mr Vivion well remarks there is but one general assembly. Perhaps this may be a matter of mere taste, for I have been used to the term “general” more than any other term. Under our present organic foundation the governor constitutes a part of the legislative assembly. Now, sir, I would like to eliminate that idea from the minds of the people, that he constitutes any part of the legislative assembly, or the law-making power of the government except exercising his right to approve and veto. And I would say when the matter comes properly up before the committee, that I want to see incorporated in the constitution the title to bills, “be it enacted by the people of the state of Montana, represented by the general assembly,” instead of “by the legislative ** 265 ** assembly of Montana.” I want to add that as a matter of education to always have present the idea that the general assembly are not the law making power, but simply represent the law making power of the people of Montana. The people of Montana are here in convention today, only we are their mouth pieces, I want these boys when they become legislators to insert when they make laws for the people, the people so represented do enact, I want that idea always present. It is a fundamental institution of American Republicanism. It may be a mere matter of sentiment, but I think it is more, and for those reasons I am opposed to the amendment.

Mr Proctor –

Mr Chairman, the reason I am in favor of the proposition, is that it expresses what it means more than general assembly. Now, in a great many of the states of the Union, the title to bills read, the people of the state representing the senate and assembly do enact as follows, or be it enacted by the people of the state representing the senate and assembly. Now, the word ** 266 ** “assembly” under that definition would only mean one house, and would leave the Senate out altogether, but the word “legislature” includes all’ the

legislative Assembly is the representative body of the whole people of the Territory or state, consisting of two houses, the senate and house of representatives. I think the naming of the word "legislature" don't refer to a particular part of the legislature, but comprehends them all

Mr Pemberton –

I would like to know how the committee on legislative department designates the law making power of the state

Mr Mills –

The chairman of the Committee is now the chairman of the committee of the whole, but if you will permit me to explain, the committee on executive departments has reported using the word legislative assembly, I am also informed that the committee on legislative departments are in favor of that term. The terms are synonymous but it seems to me "legislative assembly" is the more appropriate term. ** 267 **

Mr Pemberton –

Mr Chairman, I have no particular preference for names, but "legislative assembly" certainly is the more expressive term. And as the legislative committee have adopted the words "legislative assembly" and as the executive committee have used the same expression I think it would be best to adopt it, that which we call a rose by any other name would smell as sweet. Legislative Assembly means the law making power of the state. Now, the governor has been brought into this thing, and we are trying to legislate him out of our laws and out of our Constitution. The governor of Montana is not of any political faith or religion, but I am not in favor of helping any man who is so unfortunate as to be governor of Montana. It has been one of the misfortunes of the governors of Montana to have to say "Good God, deliver me from my friends" and I have no doubt the governor of this Territory has to have that for his doctrine "Good God deliver me from my friends."

Mr McCormick –

He hasn't got any ** 268 **

Mr Pemberton –

May he not, but I desire to say for these governors, that I have always, all times in my life, been in favor of the bottom dog. I don't see the necessity of continually knocking him about in this manner. He is out here in the cold, a long way from home and I want to treat him better.

Mr Hedges –

Mr chairman what is before the committee

Chairman –

The gentleman from Yellowstone offers the following

Resolved that whenever the words “general assembly” appear in the Constitution they be stricken out and the words “legislative assembly” be inserted.

Mr McCormick –

I would suggest to the gentleman, wherever it appears in the reports.

Mr Proctor –

The chair will please make the change

Mr Clark –

Mr chairman, I would like to ask the gentleman from Yellowstone whether or not his amendment comprehends that change wherever it occurs in matters presented to the convention, or simply in committee of the whole

Chairman –

It is a rule to be adopted by ** 269 ** the committee of the whole and when the committee rise they will report it back to the convention recommending its adoption

Amendment carried

Mr Pemberton –

I move the section be adopted

Mr Hedges –

Before that is adopted I desire to amend line 2 of Section 2, by striking out the words “removal of County seats,” and inserting in lieu thereof the word “same” there is a repetition of the word “remove” there, in fact it occurs three times in three lines, it will read as amended. “The general assembly shall have power to remove the county seat of any county but the same shall be provided for by general law, &c”

Mr Clark –

I second the amendment. Carried.

Mr Clark –

I move the adoption of the section as amended.

Seconded and carried

Chairman –

(reads)

Section 3. No part of the Territory of any county shall be stricken off and added to an adjoining county without first submitting the question to the qualified voters of the county from which the territory is proposed to be stricken off, nor unless a majority of all the qualified voters of the said county voting on the question shall vote therefor.” ** 270
**

Mr Clark –

I wish to offer an amendment, in line 2 section 3 by adding after the word “County” the words “or farmed into a new county.” So the section will read, “no part of the territory of any county shall be stricken off and added to an adjoining county, or farmed into a new county, without first submitting the question to the qualified voters, &c”

Mr Callaway –

Second the amendment

Carried

Mr Smith –

I move to amend by striking out the word “voters” and inserting in lieu thereof the word “electors”

Seconded and carried

Mr Callaway –

If in order, I move that the committee now rise and report progress and ask leave to sit again

Seconded and carried.

At ten minutes of twelve o'clock the convention reassembled.

President Clark in the chair

Mr Langhorne =

Mr President, I am instructed by the committee of the whole, to report progress to the convention and ask leave to sit again.

Mr Hunt –

Mr President, I will ask the unanimous consent of the Convention for the purpose of introducing a resolution

The Secretary –

“Resolved that a committee of three be designated by the chair. ** 271 ** move of this convention to inquire into and report concerning the manner in which the Stenographic work of the Convention is being done and to direct that the stenographers be required to keep their notes fully extended from day to day and to make such other and further report in the premises as may be for the best interest of the Convention

Hunt”

Mr Callaway –

Mr President, I rise to a point of order we are in Committee of the whole

The President –

The chairman has reported

Mr Hunt –

Mr President, the Convention when we first met deemed that it was best –

The President –

If the gentleman will allow me to state the question. The question is on the adoption of the resolution

Mr Hunt –

The convention determined ** 272 ** when we first met to have all of the proceedings reported by stenographic reporters. Upon that proposition two stenographic reporters were elected, with the distinct understanding, and it was meant to be the source of the Convention that the stenographic minutes should be kept up from day to day, and the proceedings written out in long hand. It was deemed almost a necessity to have it so done I am, however, credibly informed that in one case, in the case of one reporter, the notes have not been extended into long hand for the fourth day as yet, and the work is gradually falling far, far behind. Now, by appointing this committee we can investigate this matter right away, and if necessary discussing the incompleting stenographer, if the

committee find that the work is not being done they can bring the matter before the Convention in their report. It is a fact to my knowledge that the minutes of the fourth day taken ** 273 ** in the afternoon are not yet written out. I move that the resolution be adopted

Seconded and carried

The President –

I will appoint Mr Hunt, Mr Smith and Mr Catlin as the committee

Mr Waterbury –

Mr President I move that the Convention adjourn until two oclock this afternoon

Seconded and carried

The President –

The Convention stands adjourned until two oclock this afternoon. ** 274 **

Eleventh Day –

Afternoon Session

Convention called to order at two oclock

President Clark in the chair.

Roll call, Quorum present as follows:

Constitutional Convention

	Present Aye.	Absent No.
Abascal	/	
Burleigh		/
Browne		/
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
X Daly		
X Douglass		
Eaton	/	

Eddy	/	
X Ferris		
Fergus	/	
Green	/	
Hunt	/	
Hedges		/
Howell	/	
Haase		
Hundley	/	
Langhorn	/	
Medhurst	/	
McCormick	/	
McSorley	/	
X Merriman		
Mills	/	
X Maloney		
McClintock	/	
X Napton		
Pease		/
Pemberton	/	
Proctor	/	
Powers	/	
X Robinson		
Smith	/	
Savage		/
X Steell		
Stephens	/	
Toole	/	
X Thornton		
Vivion	/	
Van Gasken		/
Waterbury	/	
Mr. President	/	

Absent or not reported ** 275 **

Mr Collins –

Mr President, I move that Mr Douglass be excused for the afternoon session

The President –

If there is no objection he will be excused.

Mr McCormick –

Mr President, I move you that the Convention do now.

Mr Hunt –

Mr President, your special committee, sir, are ready to report in the matter of stenographers referred to it.

The President –

The secretary will read the report.

The Secretary –

“Mr President, your committee to whom was entrusted the matter of inquiring into the Stenographic reports of the proceedings, respectfully report, that they find the reports of Lippincott, stenographer, fully extended for each and every day or portion of day during which he reported, and that his work is accurate ** 276 ** and complete, that they find that lines, stenographer, is far behind having up to now only turned over the proceedings of one afternoon, and that he has failed to inset in every instance any single resolution or report as read in Convention. That your committee has called for the extended notes of the several portions of days upon which Imes was to report, but that he has not delivered to your committee his extended notes, or any extended notes so called for, other than the incomplete notes of one half day, and your committee is credibly informed that his notes are not extended. Your committee therefore believe and recommend that the best interests of the Convention demand, that in order to preserve such stenographic extended notes as may be used hereafter for publication the resignation of Imes stenographer, be accepted and that he be allowed compensation for such work as he ought to have performed up to now, whenever his ** 277 ** full extended notes shall be delivered to the Secretary of the Territory. And it is further recommended that Lippincott, stenographer, be retained to do all the work and make full and extended notes of all proceedings at a compensation of thirty dollars a day.

Respectfully submitted

Hunt

Chairman

Helena, M. T.

January 24, 1884

To the Committee of three appointed to examine into Stenographers reports &c Gentleman:

I beg leave to submit the following: whether the stenographers of this convention were sworn in, they were sworn in, they were sworn in to perform the duties set forth in a certain resolution as follows:

“It shall be the duties of the Stenographers to report the proceedings of this Convention from day to day ** 278 ** and transcribe from day to day such portions as the Convention directs.” Later a rule was adopted further deferring the duties of stenographers, to wit: before receiving the compensation provided for the official stenographers of this Convention, they shall after approval by the President deliver to the secretary of the Convention their full short hand and extended notes &c, the rule can be construed in several different ways. The stenographers must be approved by the rule under which I was sworn in. But I could not and would not promise to write out in long hand from day to day the proceedings of the convention. I give you full authority to offer my resignation as stenographer of the Convention.

John W. Imes” ** 279 **

Mr Hunt –

Mr President, I would like to ask what the effect of the motion is, if the report is adopted, would it relieve Mr Lippincott as stenographer of the Convention at a compensation of \$30 – per day. Wouldn’t that be its effect.

The President –

No sir, that would not be the effect.

Mr Hunt –

Mr President, the committee sir, has inquired into this matter and after I had written the report Imes came in, and said that he is somewhat out of practice or condition, and not quite able to keep up with the members of the convention, especially as some of the speakers talk rather rapidly. He says he did not understand that he was to transcribe his notes from day to day, and he wouldn’t and couldn’t do it. The ** 280 **

Mr Hunt –

Mr President, I move the adoption of the report

Seconded

Mr McCormick –

Mr President, I would like to ask what the effect of the motion is if the report is adopted. Would it retain Mr. Lippincott as stenographer of the Convention at a compensation of \$30 per day. Wouldn’t that be its effect

The President –

No sir, that would not be the effect.

Mr Hunt –

Mr President, committee sir, has inquired into this matter and after I had written the report Imes came in, and said that he is somewhat out of practice or condition, and not quite able to keep up with the members of the Convention, especially as some of the speakers talk rather rapidly. He says he did not understand that he was to transcribe his notes from day to day, and he wouldn't and couldn't do it. The ** 281 ** have seen Lippincott, who says he will himself undertake to furnish the convention with full stenographic notes of the proceedings and with the assistance of clerks to assist him when necessary he will take the responsibility of the whole thing upon himself. He will furnish the extended notes in longhand within a short time after adjournment of the session, for thirty dollars a day, the amount we paid before to the the [sic] two.

The President –

The operation of the resolution is adopted. I desire to state that the gentleman from Missoula, would in effect be to pay thirty dollars a day.

Mr McCormick –

Yes sir.

Mr Smith –

Mr President, in addition to what the chairman of the committee Mr Hunt has said, I will say this, that the convention is now paying thirty dollars a day, for ** 282 ** this work being done in an incomplete manner as it partially has been done. Mr Lippincott undertakes to do the work thoroughly and all of it at the same cost, for the same amount we are now paying. The necessary clerical work he proposes to bear at his own expense. So that we would be paying for thorough, good work, no more than we are now paying for the work done in an incomplete manner.

Mr Pemberton –

Question

Motion to adopt the resolution carried

Mr Smith –

I would ask for information whether the adoption of the resolution includes and accepts the resignation of Mr Imes. If not then I will move that the resignation be accepted.

The President –

It is included in the ** 283 ** resolution as offered. By adopting the resolution the convention accepted his resignation.

Mr McCormick –

Mr President, I now move that the Convention resolve itself into a committee of the whole, for the further consideration of file No. 1

Seconded and carried.

The President –

Will Mr Langhorne please resume the chair. ** 284 **

Chairman –

The committee will come to order

Mr Vivion –

Mr Chairman I desire to offer a substitute for Section 3, general file No 1 – That the Legislative Assembly shall provide by general laws the manner in which any portion of any county may be stricken off of one county and added to another county, or for the formation of new counties provided that no laws shall be passed changing county boundaries so that any established County seat in an original county shall be nearer than 20 miles from the boundary line thereof.

Mr McCormick –

Leave that off

Mr Hunt –

We didn't understand that over here

Mr Cooper –

I move the substitute be adopted

Mr McCormick –

I second the motion, now, I move to amend by striking out all that portion of the substitute beginning with the word “provided”

Mr Waterbury –

Second the motion

Mr Hedges –

I would like to hear it read. We didn't understand the substitute ** 285 **

Chairman –

(reads)

That the legislative assembly shall provide by general laws the manner in which any portion of any county may be stricken off of one county, and added to another county.

Mr Vivion –

That's not all. I call for the correct reading of the substitute by the chair

Chairman –

I read it as it is.

(Substitute read)

Mr Toole –

There is a provision there about new counties.

Chairman –

(reads) And for the formation of new counties. The question is on the amendment to the substitute. Are you ready for the question

Mr Vivion –

Mr Chairman, I am opposed to the amendment, I don't see any objection the last clause being in the Constitution of this state, for the reason that the counties being sparsely settled, and much of them mountainous country it is hardly probable that there will ever be in the Territory a county formed less than 60 or 80 miles square, and if the gentleman wants that stricken out he ought to add a clause defining the size of the counties. It would be better than to strike this ** 286 ** out, and then state that the county seat should be within 20 miles of the boundary. I think no county should be established less than a certain size

Mr McCormick –

I would like to ask the gentleman how far it is from Bozeman to Livingstone.

Laughter

Mr Vivion –

It's a conundrum. I give it up.

Laughter

Mr Pemberton –

Twenty-eight miles

Laughter

Amendment carried

Mr McCormick –

I now move the substitute as amended be adopted

Seconded

Mr Clark –

I believe if the substitute is adopted it will obliterate all the amendments that have been passed

Chairman –

That will be the effect.

Motion carried

Chairman –

The substitute is adopted in place of Section 3. Section 4 is as follows:

Section 4. In all cases of the establishment of any new county, the new county shall be held to pay retable proportion of all then existing liabilities of the county or counties from which such new county shall be formed. ** 287 **

Mr Dixon –

Mr Chairman, I desire to offer an amendment

Mr Callaway –

I was writing one but I guess I am a little too late

Chairman –

An amendment by Mr Dixon of Silver Bow. Amend general file No 1, at end of line 3, Section 4, add "less the ratable proportion of the value of County buildings and property of the County or counties from which such new county is formed

Mr McCormick –

I move its adoption

Seconded

Mr Dixon –

I merely wish to explain what my idea is. When a new county is formed from an old one of course it gives up its interest and right to county buildings, and certainly the reasonable value of the buildings should be deducted from the indebtedness of the old county a part of which the new county shall assume.

Amendment carried.

Mr Pemberton –

I move that section 4 as amended be adopted

Seconded and carried

Chairman –

(reads) Section 5. When any part of a county is stricken off and attached to another county, the part ** 288 ** stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which is taken.

Mr Dixon –

Mr Chairman, I have a substitute

Chairman –

(reads) Strike out Section 5 and insert the following

Sec. 5. When any part of a county is stricken off from one or more counties and attached to another county, the county to which such part is attached shall be liable to pay the ratable proportion of such part of all then existing liabilities of the county or counties from which such part is taken, less the ratable proportion of the value of the county buildings and property of the county or counties from which such part is taken.

Mr Vivion –

I move its adoption

Seconded and carried

Chairman –

(reads) Section 6. When any county formed from contiguous territory taken from older counties or when any county to which territory shall be added taken from any adjoining county, shall fail to pay the proportion of indebtedness of such territory to the county or counties from which it is taken, then it may be lawful for any county , from which such territory has been taken, to levy and collect by taxation the true proportion of indebtedness of such territory, in the same manner as if the territory had not been stricken off.

Mr Dixon –

I have an amendment to that. ** 289 **

Chairman –

Strike out of section 6, after the word “taken” in line 4, and insert as follows: “to recover from the county so failing to pay, by action at law, the proposition of indebtedness for which it shall be liable as provided in the two preceding sections”

Mr Pemberton –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 7. The General Assembly shall provide by General laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be limited by General laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The General Assembly shall also make provision, by General law, where by any city, town or village, existing by virtue of any special or local law, may elect to become subject to and governed by the General laws relating to such corporations.

Mr Mills –

I move the adoption of the section

Seconded and carried

Chairman –

(reads) ** 290 **

Section 8. No county, township, city or other municipality shall become a subscriber to the capital stock of any railroad, or other incorporation or association, or make any appropriations or donation by subsidy or otherwise, or loan its credit to or in aid of such corporation or association, or to or in aid of any college or institution of learning, or other institution created for or to be controlled by the State or others. And no authority shall hereafter be conferred, for any of the purposes aforesaid, by the General Assembly of the State.

Mr McCormick –

I move that Section be stricken out.

Mr Medhurst –

I rose to make the same motion. The section has been created by the committee on finance, and I think this committee has exceeded the duties entrusted to it. I move the section be stricken out.

Seconded

Mr Vivion –

I hope the section will not be stricken out of the report. It is so good a subject that we might act upon it twice and not hurt it any. I think it is proper that the section should be settled right here and that it properly belongs to the committee on towns and counties. I don't care how many committees report on the subject general, and I have no doubt other reports will come in, but if we adopt it now, why when it comes ** 291 ** up again it can be stricken out or amended. I hope the report will not be stricken out

Mr Toole –

I agree with the gentleman from Gallatin. It seems to me the section comes clearly within the scope of the Committee on towns and counties and as far as the subject matter of the section is concerned, I am in favor of it. I think it is a restriction that should be put upon counties, cities, &c, and it seems to me that now is the time and place to act upon it.

Mr Callaway –

It is in order I move that the further consideration of Section 8 be dispensed with until the consideration of the article reported by the committee on finance comes before the committee

Mr McCormick –

The motion is out of order

Chairman –

The motion is out of order . The question is on motion to strike out Section 8.

Carried by a viva voce vote of 19 ayes to 12 noes

Chairman –

(reads)

“COUNTY OFFICERS

Section 9. In each county there shall be elected one county Judge, and two county commissioners, who shall compose the board of county commissioners, and who shall hold session for the transaction of county business, as provided by law, any two of whom shall constitute a quorum for the ** 292 ** transaction of business. The county Judge shall be chairman of the board of county commissioners, and shall possess such qualification and have such jurisdiction as is herein elsewhere provided.”

Mr Hunt –

Mr chairman, I offer an amendment

Chairman –

I have an amendment offered by the gentleman from Silver Bow. Mr Clark,

Amend Section 9 by striking out of line one the words “one county judge” and strike out two county commissioners” and insert in lieu thereof “three county commissioners.”

Mr Clark –

I move the adoption of the amendment

Seconded

Mr Waterbury –

I would like to hear the amendment read. It is in each county there shall be elected one county judge and three county commissioners?

Mr Collins –

One county judge has been stricken out

Mr Clark –

If the chair will allow me I will read the section as amended. “In each county there shall be elected three county commissioners who shall compose the board of county commissioners, who shall hold sessions for the transaction of business as provided by law, any two of whom shall constitute a quorum for the ** 293 ** transaction of business.

Mr Hunt –

Mr Chairman, I offer a substitute for the amendment.

Mr Clark –

The matter of the election of judges is properly for the Committee on judiciary, and as yet we have had no report from them, besides that I am opposed to making any judge the chairman of the board of County Commissioners. My impression is that judges as a rule, are not conversant with the business of County commissioners. That is my object in introducing the substitute

Mr Pemberton –

I don't know that the judiciary committee have recommended or will recommend in this report anything in relation to county judges or probate judges. I don't know whether they have provided for any such officers, and if they have whether they call him county or probate judges. I would like to have this report harmonize with the report of the judiciary committee. If they have provided for a county or probate judge and make him the chairman of the board of County Commissioners, we should make this report harmonize with it.

Mr Hunt –

That was my idea, sir, in offering the substitute ** 294 **

Mr Smith –

Mr chairman, I will say, as a member of the committee on judiciary, that we have conferred to some degree upon the matter of County officer. The committee on judiciary will report about the same in relation to county judges, that the committee on town and

county or organization have reported. That is, there shall be one county judge elected and two county commissioners, who shall manage the financial affairs of the county, and who shall sit as a board of commissioners of the county, any two of whom shall constitute a quorum. And that the county judges be paid a salary in full for all services, so that this obnoxious practice of fees cannot be brought in to the question in the board of county commissioners, of which the judge himself shall be one. So there will be no question about what he shall revive. I am of the opinion also that that [*sic*] the judiciary committee will recommend that the county judge shall be the probate judge of the county, thereby doing away with the expense of probate judge and the expense of one county commissioner.

Mr Pemberton –

I would like to hear the substitute of the gentleman from Choteau read.

Mr Hunt –

I offered it some time ago ** 295 **

Chairman –

Mr Hunt offers the following substitute. “I move to strike out in Section 9, the words “one county judge” in line 1; and insert in line 2, after the word “who” the words “who with the county judge of the county.” Also line 5 in place of the words “as in herein elsewhere provided” insert “as is in this Constitution elsewhere provided”

Mr Hunt –

I move its adoption

Mr Pemberton –

I would like to hear the section read as amended

Mr Hunt –

In each county there shall be elected two county commissioners who, with the county judge of the county shall compose the board of County Commissioners, and who shall hold session for the transaction of County business as provided by law, any two of whom shall constitute a quorum for the transaction of business. The County judge shall be chairman of the board of County Commissioners and shall possess such qualifications and have such jurisdiction as in this Constitution elsewhere provided. The judiciary committee have provided for a county judge and that will make this section harmonize with their report

Mr Hedges –

Second the amendment

Chairman –

The question is on the amendment of Mr Hunt, the gentleman from Choteau

Mr Callaway –

Mr Chairman, considering the ** 296 ** progress we have made, I for the present shall support the amendment of the gentleman from Silver Bow, Mr Clark. The gentleman from Beaverhead spoke very correctly concerning the report of the judiciary, It provides as I understand it, for district courts and for county courts. The county courts shall also administer on estates and discharge the duties of a probate court. Now, sir, if that system is to be adopted by the Convention, I am opposed to that court being chairman of the board of County Commissioners. Indeed from my experience, I think one should act as a check to the other. These two offices should not be consolidated. The present system works very well, and if the proposition offered by Mr Hunt should be carried by the convention, that the county court shall act as the probate court and be the chairman of the board of county commissioners, it is putting too much into one man's hands. Mr Dixon, the chairman of the judiciary committee, can correct me if I mistake in stating it as the committee will report a proposition what provides that the legislature in its wisdom may abolish the office of county judge, when that may have proved distasteful and create in lieu thereof the system as reported by Mr. Burleigh in the ** 297 ** report on judiciary. For these reasons I shall be compelled at this time to support the amendment of the gentleman from Silver Bow.

Mr Pemberton –

It seems to me, Mr Chairman, that we would facilitate business very much if we could act independently of what is to be reported or recommended by other committees who may report at some indefinite time the same subject matter that has been acted upon in the convention. Now, as I understand from some of the gentleman of the judiciary committee, the amendment offered by the gentleman from Choteau harmonizes this report with the report of the committee on judiciary. It is to be presumed that the report of the judiciary committee, composed as it is of the best lawyers in the Convention, will commend itself to the favorable consideration of everybody in the convention. I know of my own personal knowledge that this system of County Commissioners don't work well. I know that in many places the system is adopted of having the county judge the chairman of the board of county commissioners and giving to him probate and general jurisdiction in civil matters not exceeding a thousand dollars and ** 298 ** the power to

hear and determine misdemeanors and nowhere where this system is adopted does it work well.

Mr Clark –

I wish to simply say a word as suggested by the gentleman from Madison, should the report of the judiciary committee be adopted the county judge will have all the business in his hands that he can possibly transact without employing him with the affairs of the county. And as well as being a member of the board of County Commissioners he must also be an attorney and a judge. Every board of county commissioners as far as I know has always had need of the advice of the best legal interns to be obtained in the place where they live. And a judge should understand his business and should confine his business to that of a judge. A man to be placed on the board of county commissioners should be acquainted with all the minutia and details of business, and we do not usually find that embodied in the qualifications of a judge. Suppose the county judge is the chairman of the board of county commissioners and their legal advisor, and as many times occur suits are brought against the board, and the case is tried before the county judge, there the judge ** 299 ** would be the judge of his own actions. I say it is inconsistent and he should not be a member of the board, and I shall oppose the substitute.

Mr Vivion –

Mr Chairman, I hope the amendment of the gentleman from Butte will not prevail; for a number of reasons. But I am sure of one thing, if I am ever in another convention I will not put in the first report. I owe a dozen apologies for getting on to sacred ground, more than I will get over making for some time. But, sir, it wasn't the intention of the committee on towns and counties to make this constitution. It wasn't the intention of the committee to insert on every word in a given proposition they have reported. If there is a better proposition offered why we will take it and be glad to get it. If any gentleman has got on to our ground and done better than we have we thank him. But I believe we will all be here offering amendments and substitutes, next Christmas if we go on in this way. Why not adopt this report for the present and if afterward there is a better system reported we can substitute it for this. ** 300 **

Chairman –

The question is on the motion of Mr Hunt to strike out the words "one county judge" on first line, and insert after the word "who" the words "with the county judge of the County" and strike out in line 5, the words "as herein elsewhere provided" and insert in lieu thereof, "as is in this constitution elsewhere provided". Are you ready for the question.

Voice –

Question

Motion carried

Mr Hunt –

I move the adoption of the section as amended

Seconded and carried

Mr McCormick –

I move you the section be numbered 8.

Seconded and carried

Chairman –

(reads)

Section 10. The county Judge and commissioners shall hold their office for the term of four years, and until their successors are elected and qualified as is provided by law, *Provided* that one commissioner be elected every two years. That when the population of any county shall exceed ten thousand the board of county commissioners may consist of five members, including the county judge, who shall be elected as provided by law, any three of whom shall constitute a quorum for the transaction of business. Any vacancy from any cause in the board of county commissioners shall be filled by the Governor by appointment, by and with the advice and consent of the Senate.
** 301 **

Mr Dixon –

Mr chairman, I desire to offer an amendment.

Chairman –

“Strike out in Section 9 all of the beginning of the section, down to and including the words “by law” on line 2, and insert the following, “The county judge shall hold his office for the term of two years and the County commissioners for the term of four years. And until their successors are elected and qualified.”

Mr Vivion –

I move the adoption of the amendment.

Seconded and carried.

Mr Howell –

Mr Chairman, an amendment

Chairman –

“Amend Section 9. By striking out in line 7, the words “by and with the advice and consent of the senate”

Mr Howell –

I move its adoption

Seconded and carried.

Mr Collins –

I have an amendment

Chairman –

Amend section 9 by striking out the word “ten” line 3 and inserting in lieu thereof the word “five”

Mr Howell –

I move its adoption

Seconded and carried

Mr Vivion –

I move the adoption of the section as amended

Seconded and carried ** 302 **

Mr Hundley –

I move you the number be changed from Section 10 to Section 9

Seconded and carried

Chairman –

(reads)

Section 11. There shall be elected in each county, as is provided by law, one county clerk, who shall be clerk of the board of county commissioners and *ex officio* recorder of deeds; one sheriff; one treasurer (who shall be collector of taxes); one county superintendent of schools; one county surveyor; one assessor; one coroner. Persons elected to the different offices named in this election shall hold their respective offices for the term of two years, and until their successors are elected and qualified. In case a vacancy occurs in any county office, save and except the board of county commissioners, the same shall be filled by the board of county commissioners, by appointment. The person so appointed shall hold their office until the next general election, and until their successors are elected and qualified. There shall be elected in each county one county attorney, who shall hold his office for the term of two years, and until his successor shall be elected and qualified, and whose qualifications and duties shall be as in this constitution provided, and hereafter provided by law.

Mr Hunt –

Mr Chairman, I have an amendment.

Chairman –

The gentleman from Choteau offers the following amendment.

Insert after the word “years” line 5, the words “except as in this Constitution otherwise provided”, also insert the same words in line 10, after the word “years” also after the word “Coroner” in line 4 ** 303 ** insert “one public administrator.”

Mr Hunt –

I move the adoption of the amendment.

Seconded and carried.

Mr Dixon –

Mr Chairman I have an amendment

Mr Vivion –

An amendment, Mr Chairman.

Chairman –

Amendment by the gentleman from Silver Bow, Mr Dixon.

Mr Dixon –

My amendment is provided for in the subsequent section and I withdraw it

Mr Hunt –

Mr Chairman, I sent up an amendment in reference to striking out a certain portion of Section 11 – in regard to County Attorneys

Chairman –

Strike out all of section 11 after the word “qualified” on line 9.

Mr Hunt –

The office of county attorney is fully provided for in the report of the judiciary committee. It is mere surplusage and there is no necessity for it here

Mr Callaway –

I move its adoption.

Seconded and carried

Mr Hedges –

Mr chairman, I have an amendment.

Chairman –

The gentleman from Lewis and Clarke, Mr Hedges offers the following amendment: strike out all of line 1 section 11, down to and including the words “provided by law” and insert in lieu thereof the following: “The legislative assembly shall provide by law for ** 304 ** the election of the following officers:”

Mr Toole –

I move its adoption

Seconded and carried

Mr Clark –

I move the adoption of the section as amended.

Seconded and carried

Mr Mills –

I move Section 11 be changed to Section 10.

Seconded and carried

Chairman –

(reads)

Section 12. No person shall be eligible to any county office unless he be a qualified elector, nor unless he shall have resided in the county one year next preceding his election.

Mr Pemberton –

I move the adoption of the section as it stands.

Seconded and carried

Mr Hedges –

I move the number be changed from 12 to 11

Seconded and carried

Chairman –

(reads)

Section 13. There shall be elected in each precinct, as provided by law, one Justice of the Peace and one constable, who shall each hold his office for the term of two years. *Provided*, That in precincts containing two thousand or more inhabitants, the number of justices and constables may be increased, as provided by law, any vacancy occurring in any precinct office shall be filled by the board of county commissioners by appointment.

Mr McCormick –

I move the section be stricken ** 305 ** out, it is fully provided for in the report of the judiciary committee

Mr Hunt –

Second the motion.

Mr Vivion –

I hope the motion to strike out will not prevail, because I don't know of any particular procedure one committee has over another. The judiciary committee have not yet

reported, and when they do, if this clause is provided for, it will be plenty of time to strike it out

Mr Hunt –

I think it is proper that each committee should perform the labors allotted to it. We have no more right to presume that the judiciary committee has not provided for justices of the peace, then we have the presume that they have not provided for county and district courts. It is surplusage here and should be stricken out

Motion to strike out carried

Chairman –

(reads)

Section 14. The General assembly shall provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require; and their terms of office shall be as prescribed by law, not in any case to exceed two years. ** 306 **

Mr Hunt –

Mr Chairman, I move to amend by inserting after the word “years” line 3, the words “except as in this Constitution otherwise provided”

Mr Hedges –

I suggest that “general assembly” be changed to “legislative assembly”

Chairman –

That is already provided for.

Mr Hunt –

I move the adoption of the Section

Seconded and carried.

Mr Mills –

I move that number 14 be changed to number 12.

Seconded and carried.

Chairman –

Section 15. The compensation of all county and precinct officers shall be as provided by law.

R.P. VIVION, Chairman Committee No. 10.

Mr Hunt –

Mr Chairman, I move to amend by inserting after the word “officers” the word “except as in this Constitution elsewhere provided.”

Seconded and carried.

Mr Pemberton –

I move to amend the name of R. P. Vivion, to “Rob Vivion” and by striking out “No 10,”

Mr Vivion –

I move the clerk be authorized to ** 307 ** provide me with a box of cigars for that report.

Laughter

Mr Collins –

I move the adoption of the Section as amended.

Seconded and carried.

Mr Hundley –

I move to substitute 13 in place of 15.

Seconded and carried.

Mr McCormick –

Mr Chairman, I now move you, sir, that the committee rise and instruct the chairman to report general file no 1 back to the convention as amended by the committee of the whole and recommend that as amended it be adopted.

Seconded and carried

Chairman –

The committee will now rise. Will the President, please take the chair. ** 308 **

Five oclock pm the committee of the whole arose
President Clark in the chair

Mr Langhorne –

Mr President, I am instructed by the committee of the whole to report to the Convention
the action of the Convention. But I would ask until tomorrow morning to prepare my
report

Mr Collins –

Mr President, I move we do now adjourn until seven oclock this evening

Seconded

Mr Vivion –

I move to amend by making it ten oclock tomorrow morning

Seconded and carried and the original motion carried

The President –

The convention stands adjourned until tomorrow morning at ten oclock ** 309 **²⁷ **
310 **

Twelfth Day -
January 25, 1884

Morning Session

Convention called to order at ten oclock
President Clark in the chair
Roll call. Quorum present as follow:

	Present	Absent
	Aye.	No.
Abascal	/	
Burleigh		/
Browne	/	
Collins	/	
Carroll	/	
Callaway	/	

²⁷ This page is the image of a folder labeled Proceedings. 12th day, Jan. 25, 1884.

Catlin	/	
Cooper	/	
Dixon	/	
X Daly		
Douglass	/	
Eaton	/	
Eddy		/
Ferris	/	
Fergus	/	
Green	/	
Hunt	/	
Hedges		/
Howell		/
X Haase		
Hundley	/	
Langhorn	/	
Medhurst	/	
McCormick	/	
McSorley	/	
Merriman	/	
Mills	/	
X Maloney		
McClintock		/
Napton		
Pease	/	
Pemberton	/	
Proctor	/	
Powers	/	
X Robinson		
Smith	/	
Savage		/
X Steell		
Stephens	/	
Toole	/	
X Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	

X absent or not reported ** 311 **

Journal of yesterday read.

Mr Hunt –

Mr President, I move that the reading of the report of the special committee on stenographer be dispensed with

Seconded and carried

Minutes approved

The Secretary –

“Helena, January 24, 1884

To the President and members of the Constitutional Convention.

Gentlemen, I have the honor to acknowledge the receipt of a copy of Resolution proposed by your honorable body on the 23^r inst, in relation to printing for the convention, and in reply would respectfully say, that I have carefully read the Resolution passed at the 13th Legislative assembly and have striven earnestly to carry out the letter and spirit of the instructions Contained in Section 5 of that resolution which authorizes the Secretary of the Territory to procure and suitably furnish a hall, and procure all necessary printing to be done &c for the use of the Convention after the organization of the Convention you by resolution, requested me to have certain printing executed not designating any particular printing office to perform such printing. In obedience to said resolution I called at the Herald office ** 312 ** and arranged for the printing necessary to be done for the use of the convention. As no complaint has come to me that the printing is not well and promptly executed I can see no good reason for countermanding the contract for printing. Regretting that the legislative assembly did not relieve me of this responsibility by designating the office where printing should be executed I have the honor to be

Very respectfully

John S. Tooker

Secretary of Montana

The President –

Is it a resolution?

Mr Callaway –

No sir it is a proposed preamble for the Constitution merely

Mr McCormick –

Everything of that kind goes to the committee without motion ** 313 **

Mr Callaway –

I made no motion

Mr Pemberton –

Mr President, I make the point that it is out of order at this time

The President –

The point is well taken. I will hold it for the present

Mr Langhorne –

Mr President, the report of the committee of the whole on general file No one.

The Secretary –

“Mr President, your committee of the whole to whom was referred the consideration of General file no 1. Relative to City, County and town organizations beg leave to make the following report.

Section 1 was amended by striking out the word “now” in line 1, and inserting after the word “they” the words “shall exist at the time of the admission of the State into the Union”, and add at the end of Section 1, “until otherwise established or changed by law.”

Section 2 was amended by striking out the words removal of County seats,” after the words “but the” line 2, Section 2, and insert in lieu thereof the word “same”, also to substitute for the word “and” in line 4 the ** 314 ** word “but.”

Section 3 was amended by the following substitute “What the legislative assembly shall provide by general laws the manner in which any portion of any county may be stricken off of one county and added to another county, or for the formation of new counties,”

Section 4, was amended by adding at end of line 3, Section 4, the following: “less the stateable proportion of the value of the County buildings and property of the County or Counties from which such new county is formed.”

Section 5, was amended by the adoption of the following substitute, “Section 5, when any part of a county is stricken off from one or more Counties and attached to another County, the County to which such part is attached shall be liable to pay the ratable proportion of such part of all then existing liabilities of the County or Counties from which such part is taken, less the stateable proportion of the value of the County buildings and property of the County or Counties from which such part is taken.”

Section 6, was amended by striking out all after the word “taken” in line 4, and inserting the following: “To recover from the County so failing to pay by action at law, the proportion of indebtedness for which it shall be liable as provided ** 315 ** in the two preceding sections.”

Section 8 was amended by striking it all out.

Section 9 – was amended so as to change the number to Section 8, also by striking out in line 1, the words “one county judge and” and inserting the words after “who” in line 2, the words “with the county judge of the County”, also in line 5, page 3, in place of the words “as is herein elsewhere provided” insert the words “as in this Constitution elsewhere provided.”

Section 10 was amended by striking out all from the beginning down to and including the words “by law,” in line 2, and inserting the following: “The County judge shall hold his office for the term of two years and the County Commissioners for the term of four years and until their successors are elected and qualified”, also on line 3, insert the word “five” instead of “ten”, also strike out in line 7, the words “by and with the advice and consent of the Senate.” Section 10 amended so as to be numbered Section 9.

Section 11 amended so as to strike out line one, all to and including “law”, and insert “the legislature shall provide by law for the election of the following officers, also after the word “years” in line 5, insert “except as in this Constitution otherwise provided,” also after the word “Coroner” line 4, the ** 316 ** words, “public administrator,” also line 8, by striking out the word “their” and inserting “his” and the words “their successors” and insert “his successor is”, also strike out all after the word “qualified”, in line 9, Amended so as to number Section 10 instead of 11.

Section 13. stricken out.

Section 14. Amended by adding to line 3 the following: “except as in this Constitution otherwise provided.” Section 14 changed to number 12.

Section 15 amended by inserting after the word “officers” the words “except as in this Constitution elsewhere provided” Section 15 changed to number 13.

Langhorne
Chairman

The committee of the whole adopted the following:

Resolved that wherever the words “general assembly” appears in the reports of committees they be stricken out and the word “legislative assembly” be inserted

Langhorne
Chairman”

Mr Toole –

Mr President, I think the report should also provide that wherever the word "legislative" appears, it should be changed to "legislative assembly." ** 317 **

Mr Langhorne –

That is the report

Mr Toole –

No sir. It says where the words "general assembly" appears, it should be "legislative assembly". The resolution offered provided that where the words "legislative" appeared, that it also be stricken out and "legislative assembly" put in its place, so it will appear universal throughout the Constitution

Mr McCormick –

Mr President, I move you sir, that the report of the chairman of the committee of the whole be adopted, and that general file No 1, and the amendments agreed upon in the committee of the whole be engrossed for a third reading. I will state to the Convention that under our rules this proposition is subject to further amendments before the final vote is taken upon it, and the proper course to be pursued now, if there is any member in the convention desirous of offering any further amendment to the file, the proper time to do it would be now before the final adoption of the report. The question arising on the proposition were fully discussed in the committee of the whole, I move you therefore, the adoption of the report ** 318 ** of the committee of the whole on general file No 1. With the amendment agreed upon in committee of the whole be adopted.

Seconded

The President –

The question is upon the adoption of the report of the chairman of the committee of the whole on file No 1. With the amendments and that it be engrossed are you ready for the question?

Mr Power –

Mr President, I move that section 9 be reconsidered

The President –

I will say that the section can be amended, but we cannot reconsider what took place in the committee of the whole.

Mr McCormick –

The proper way would be for the convention to adopt the report, after it is adopted then the file as amended is subject to further amendment by the convention. The proper

course is to adopt the report as amended yesterday in the committee of the whole and then if any member desires to further amend any section of the file it can be done in convention

Mr Callaway –

Mr President, I move to amend the motion of the gentleman from ** 319 ** Missoula and make his motion complete. That the article shall take its proper place in the Constitution

Mr Pemberton –

That is a matter to be considered by the committee on adjustments

Mr Proctor –

Mr President, the gentleman from Missoula is wrong as to the proper course. If we adopt the report now, it cant be amended any more without a reconsideration of the vote by which we adopted it. We must amend it before its adoption if we adopt it now we accept it with all the amendments and recommendations of the committee of the whole. It is open no to amendment before the motion for adoption is carried.

Mr Stephens –

I move we adopt the report of the committee of the whole

The President –

The question is upon the adoption of the report. Reading the report is a reception of the report by the convention. Sir the opinion of the chair, the adoption of the report precludes any further amendment.

Mr McCormick –

Certainly not, sir. Certainly ** 320 ** not. The convention may amend the report

Mr Proctor –

Mr President, as far as the entire report of the committee of the whole is concerned, I cant support it. I will have to vote against it. There are some things in the report I cant support.

Mr Stephens –

I move the adoption of the report.

Seconded.

The President –

The opinion of the chair is that the report is now open to amendment. As many as are in favor of the adoption of the report of the committee of the whole &c.

Motion carried

The President –

The ayes seem to have it. The ayes have it and the report is adopted.

Mr Pemberton –

Mr President I move the report be referred to the committee on engrossment.

Seconded

Mr McCormick –

I will ask that the gentleman do not press that question. The bill is now open to amendment. ** 321 **

Mr Pemberton –

I want to get rid of the report

Mr McCormick –

The gentleman from Lewis and Clark desires to amend a section

Mr Pemberton –

I want to have the report disposed of and the way to do it is to refer it for engrossment. Do I understand that some gentleman desires to offer an amendment.

Mr McCormick –

Yes.

Mr Pemberton –

Well, I wont press my motion

Mr Power –

Mr President, will you please have section 9 as printed, section 8 of the report, read

The President –

Yes sir

The Secretary –

“Section 9 was amended so as to change the number to Section 8, also by striking out in line 1 the words “one County judge and,” and inserting the words after “who” in line 2, the words “with the County Judge of the County” also in line 5, page 3, in place of the words “as is herein elsewhere provided”, insert the words “as in this Constitution elsewhere provided.” ** 322 **

Mr Power –

Mr President, an amendment.

The Secretary –

“Amend Section 9 as printed to conform to section 10 as printed referring to the number of county commissioners and make it “four county commissioners with the County judge Power”

Mr Collins –

Second the amendment

Mr Power –

That is to make it provide for four county commissioners with the county judge

Mr Toole –

Will the gentleman from the third judicial district please read the section as it will read when amended?

Mr Hedges –

Mr President, I would like to inquire if this, under the general rule cant be printed before it comes upon its final vote?

The President –

There is no rule governing that point

Mr Hedges –

I don't believe the members would recognize it if it was printed

The President –

There is no rule governing that ** 323 **

Mr McCormick –

I will state that bills are never printed but once. When they are first introduced and if they have been acted upon by the committee of the whole they are ordered to the engrossing committee.

The President –

Will the gentleman from Choteau read the section as amended

Mr Power –

I haven't got the amendment, It is on the desk. But I want to have four commissioners and the County judge, and in every particular to have section 9 take the place of Section 10. To have five county commissioners irrespective of population.

The motion to amend was put and carried by a viva voce vote of 18 ayes to 14 noes.

Mr Proctor –

Mr President, I understand the motion to amend prevailed

The President –

Yes sir

Mr Proctor –

That involves striking out in the printed copy all after the word "years" in the third line. The board of county commissioners shall consist of five members with the county judge who shall be elected by law &c ** 324 ** any three of whom shall constitute a quorum. I move to strike that out

Mr Hedges –

Second the motion

The President –

Will the gentleman reduce to writing the part to be stricken out

Mr Toole –

Mr President, the adoption of the amendment of the gentleman from the Third district will necessitate a further amendment to the same section, if I correctly understand the

amendment which has just passed. And that would be to amend in line 3, Section 8, Section 9 as printed, “Any Two of who shall constitute a quorum by striking by striking out “two” and inserting “three”

Mr Waterbury –

Motion

The President –

There is an amendment offered by the gentleman from Yellowstone

Mr Toole –

I beg the pardon of the gentleman ** 325 ** I didn’t know the amendment was seconded.

Mr Proctor –

It is simply a motion to strike out

The President –

Will the gentleman please state to the chair the parts to be stricken out

Mr Proctor –

When the proportion of any county shall exceed five thousand the board of County Commissioner shall consist of five members including the county judge, who shall be elected as provided by law.

The President –

The proposition is to strike out the entire sentence

Mr Proctor –

Yes sir

The President –

The question is to strike out the entire sentence in Section no 10 as printed. The Section I think is amended and reads “Section 9. When the proportion of any county shall exceed ten” &c. Are you ready for the question –

Voices –

Question ** 326 **

The question being put was carried

The President –

The motion to adopt the amendment is carried and the entire sentence is stricken out beginning with “when the population of a county shall exceed ten thousand.”

Mr Toole –

Mr President, I move to amend so it shall read any three of whom shall constitute a quorum, on line 3, Section 9, as printed, that two be stricken out and three inserted

Mr Pemberton –

Second the motion

Motion to amend put and carried

Mr Pemberton –

Mr President, I offer an amendment to Section 9, as adopted by the committee amend Section 9 by striking out the words “provided that one commissioner shall be elected every two years”

The Secretary –

“Amend Section 9 by striking out the words “provided one commissioner shall be elected every two years.” Commencing on line 2, as reported by ** 327 ** the committee

Pemberton”

The President –

Is the motion supported

Voice –

Second the motion

Mr Toole –

Mr President, it seems to me that deserves something more than passing consideration. If the provision is stricken out, I understand this, that the members of County Commissioners consisting of five persons shall be elected for a period of four years.

Mr Pemberton –

The county commissioners shall hold office four years, provided that one commissioner be elected every two years. How could you make men hold office four years and elect one every two years? That was the object of my amendment

Mr Toole –

I agree with the gentleman that it is necessary to strike it out.

Mr McCormick –

It seems to me that by striking out one and inserting two will completely cover the difficulty sought to be reached by the gentleman from Silver Bow. I move that one be stricken out and two inserted ** 328 **

Seconded.

The President –

The question is upon the amendment of Mr McCormick to the motion, by striking out one and inserting two.

Carried –

Mr McCormick –

Mr President, I move that general file No 1. Be referred to the committee on engrossment.

Mr Vivion –

I have an amendment

The Secretary –

“Amend general file No 1. by adding the following Section, as follows:

Section 15, No county city, township or other municipality, shall become a subscriber to the capital stock of any railroad or any other incorporation or association, or make any appropriation or donation by subsidy or otherwise, or loan its credit to or in aid of any of any such corporation or association, or to or in aid of any college or institution of learning or other institution created for or controlled by the State or others and no authority shall hereafter be conferred for any of the purposes aforesaid by the legislative assembly of the state.

Vivion” ** 329 **

Mr Pemberton –

Second the motion

Mr McCormick –

Mr President, the gentleman from Gallatin county reminds me a good deal –

The President –

If the gentleman will allow me to state the question

(Laughter)

The question is upon the amendment of the gentleman from Gallatin.

Mr McCormick –

I was about to say the persistency with which the gentleman from Gallatin hangs to that amendment of his reminds me very much of the story of the man who took the soup. If he cant get it in one place he proposes to put it in at another. (Laughter) – Mow, this very same thing was offered yesterday and rejected in the Committee of the whole and I move it be indefinitely postponed.

Mr Vivion –

It is the same in substance but the language is not the same if the gentleman will examine it closely I think he will consider it a little differently from what he does and if he would read it a little closer he will see its importance ** 330 ** I ask now, sir, -

Mr Pemberton –

Louder –

Mr Vivion –

I ask now, sir, that the amendment receive the consideration it merits. (Laughter). If it merits none, of course vote it down. It was voted down yesterday, in substance, as I said, on the grounds that the proposition was embodied somewhere else. Wherever that is, is of no consequence. If the gentlemen want to vote the proposition down now, there is no use of presenting it hereafter, in some other place. That is the position I take. If we are ready to declare ourselves on the proposition now, why present it hereafter to the Convention in another form? It can be put in here now, and if it comes up again it can be acted upon. Its better to have it in twice than not have it in at all.

The President –

The question is on the amendment of the gentleman from Gallatin

Mr Callaway –

Ayes and noes ** 331 **

Mr Powers –

Ayes and noes

Mr Collins –

Mr President, before the ayes and noes are called I want to say a word on this subject. The committee on finance was appointed for the purpose of reporting upon and placing a restriction on the power of the legislature in reference to its debts &c, that was one purpose for which the committee was appointed. That committee have investigated the matter and will report. Now, I want the members of this Convention placed upon the record, understanding that matter. It seems to me the motion of the gentleman from Gallatin is out of order, but I don't raise that question. I claim however, that this particular branch of the Convention should not be pestered by this amendment, and the proposition should not be voted on by the Convention until it comes up in its proper place.

Mr Mills –

Mr President, as I expect to vote aye on the proposition, I wish to explain why. The gentleman claimed yesterday it was somewhat in the nature of a discourtesy to now vote on a proposition the committee intends to submit in their report hereafter. I am ** 332 ** satisfied that the gentleman offering this amendment intended no discourtesy to the committee on finances, and I certainly intend none when I cast my vote. It is a very good thing to vote on these propositions as they come up. I know of two instances in the Convention already where the same proposition has been acted upon, and when they come together one can be stricken out. When I vote for the proposition I do so with no intention of discourtesy to the committee on finances.

The President –

The secretary will call the roll

The ballot resulted as follows

	Aye.	No.
Abascal		/
Burleigh		
Browne		/
Collins		/

Carroll	/
Callaway	/
Catlin	/
Cooper	/
Dixon	/
Daly	
Douglass	/
Eaton	/
Eddy	/
Ferris	
Fergus	/
Green	/
Hunt	/
Hedges	/
Howell	/
Haase	
Hundley	/
Langhorn	/
Medhurst	/ ** 333 **
McCormick	/
McSorley	/ ²⁸

Mr McCormick –

Mr President, I want to say that I am heartily in favor of everything state in this section and I vote no for the reason that I don't think it properly belongs under this general head. I certainly, sir (when the question comes up, and it will come up in the report of the committee on finances, and we will find the same thing in the report) I certainly shall vote for it. But, sir, believing that it is not proper to incorporate it in this file under consideration, I shall vote no.

Merriman –

I ask to be excused ** 334 **

X Merriman

Mills /

Maloney

McClintock /

Napton

Pease /

Pemberton /

²⁸ The votes are spit by what appears to be statements by members as they vote.

Mr Pemberton –

(Amid great confusion stated his reasons for voting aye)

Proctor	/
Powers	/
Robinson	
Smith	/

Mr Smith –

Mr President, the proposition as state by the gentleman from Gallatin yesterday has such a question as this is so good that it cant be voted upon to offer, I think is true. It matters not to me where the proposition is incorporated in the Constitution, so we have it. I consider every word of it to be true, and I think the committee on finance better report it perhaps more fully than the gentleman offers it now. I shall vote aye for the proposition now and shall vote aye when it comes up in the report of the committee on finances, and in the committee on revision and adjustment of which I believe I am chairman I shall use my endeavor to have the section incorporated under its proper head.

Savage	
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

The President –

The chair desires to state ** 335 ** that he is in entire sympathy with the statements incorporated in the resolution but having the assurances of the chairman of the committee on finances that it will be brought forth and incorporated in the constitution I will vote no.

The President –

The result is fourteen ayes, and twenty noes. The motion is lost

Mr McCormick –

I move now that general file No 1 as amended by the committee of the whole be adopted and referred to the committee on engrossment.

Mr Collins –

Mr Douglass has an amendment I would like to see offered

Mr McCormick –

I withdraw my motion

The Secretary –

“Amend section 14. Of file No 1. As follows:

The compensation of all county and precinct officers shall be a fixed salary as may be provided by law, but all fees over and above said fixed salary shall be turned into the County Treasury

Douglass ** 336 **

Mr Waterbury –

Second the motion

The President –

The question is upon the adoption of the amendment as read

Mr Vivion –

Mr President, I am opposed to having county officers salaried, and I am opposed to the amendment. My impression is sir, that salaried officers for county officers don't work well. The salaried officer who gets so much for what he does and everything he does, may hold his office open during business hours or not, as he pleases, he gets his pay whether he does the services or not. I tell you that man is man, and human is human, (Laughter), and if you pay a man whether he does the work or not, you will find the work wont be done. If you pay a man in advance, it matters not to him whether the work is does or not. He gets his money whether he sleeps until ten oclock or goes to bet at four. He gets a fixed salary. There are two classes of bad paymasters the one that pays before the services are done, and the one that never pays, and the one that pays in advance is at least the biggest fool of the two. (Laughter)

Mr Pemberton –

Mr President, I think the resolution is purely a matter of legislation as to how officers should be paid. ** 337 ** There is not a fundamental idea in it. It is simply a matter of pure legislation, this question that when Montana becomes a state law it shall pay its officers. There is not a fundamental principal in it. I protest against sticking the Constitution full of statutes. Matters that should go in the statute, and not in the Constitution I protest against such things being carried into the constitution, and I say if it is done if these odious matters are wrong into the constitution, these pure matters of legislation, the people when they come to vote upon the

constitution, will vote it down. If we are going to waste time on such things as this we will be here until Christmas and when we will have finished our work we will have builded up a document sir, so cumbersome and like a code that the people will vote it down, as they ought to.

Mr Waterbury –

I move the resolution be laid on the table

Seconded

Mr Hedges –

Mr President, I desire to express my ideas on this subject, and I say it does involve a fundamental principle and a very sound and serious principle. It introduces itself to every man of business who has taxable property in the Territory. It removes from ** 338 ** officers in the first place the temptation to charge illegal fees, a thing that is done universally now. If all fees go into the County treasury there is no temptation of that kind. I don't believe that there is a thing involved in the amendment that shouldn't go in the constitution. I believe that all fees of the county should go into the county treasury and not into the pocket of the individual holding office. I believe it would be much better to fix a limit. The officers may be paid out of the proceeds of the fees. It is a satisfaction to the people to know that the accounts of public officers and their receipts are submitted to some one officer or other and that they don't check everything into their pockets. It should be required that the county assessor and treasurer should account to some officer and the people know how much he receives. That matter is so unknown to the people here that if you would go out on the streets and inquire what the receipts of such an officer is the sheriff of the county for instance, there would be a diversity of three or four or five thousand dollars in their estimates. I don't believe there is any such enormous amounts received, but I do believe the people should know what is received and who it is paid over to.

Mr Toole –

Mr President, as to this principle of fees ** 339 ** covered by the amendment, that I should heartily endorse if I did not know that the question has found a place in one of the reports of committees and will be presented to this body. As far as the proposition is concerned that there should be salaries established for officers of all cities, towns, counties &c. I believe the proposition is a good one and should be inserted in the constitution. As far as the fees are concerned such as county clerk, sheriff, assessor and those officers I know of no reason why they should not be paid a fair compensation, for their services in fees, but as to justices of the peace I think it is proper that the temptation which surrounds them by reason of the system of fear should be removed. I think when the judiciary committees have brought in their report they will recommend that a fixed salary be paid them to be established by the legislative assembly, and I am opposed to the amendment now.

Mr Collins –

Mr President –

I think question before the convention is certainly a fundamental one. It is one that has been grappled with by other constitutional conventions in several states of the Union. From the best information and experience of some of the older states, it is a right, fit and proper object to be placed in the Constitution and they have placed it in most of the Constitution. ** 340 ** The governor, lieutenant governor and all other officers of the Territory are salaried under our present Territorial form of government and I don't see why we shouldn't place in the Constitution a provision that all state and county officers when Montana becomes a state shall be salaried. This amendment can be made to suit my views. I believe all state officers, judiciary as well as others the board of County Commissioners, county judge, county clerks, the clerk of the several courts, in fact all county and state officers except probably sheriff, should be salaried. Let the statutes provide what amount the officers shall receive. As far as the past history of Montana is concerned, I will venture to say that the salaried officers perform their duties to the satisfaction of the people, as much as those who receive fees I think the Constitution of Montana should have inserted in it that all county and state officers be salaried

Mr Stephens –

Mr President, I want to say a few words upon this proposition before it is voted upon. General file No 1. As amended yesterday I thought suited without any further amendment. I am satisfied that there is a material distinction between salaried offices and fee offices. In many cases the officers who receive salaries for their services perform the duties of the office in a perfectly satisfactory manner ** 341 ** Sir wherever a person knows he receives a sum of one or two thousand dollars a year for his services it is immaterial to him whether his services are done well or not. He receives his salary at any rate. It is not according to the character of his services. Not according to whether it is well or poorly done. He receives his salary and he gets lazy and it gets him with the idea that he won't attend to his business. The man who gets a salary doesn't care whether he gets up at six o'clock or nine o'clock in the morning. Whether he is found in his office at four in the afternoon or ten o'clock at night. The officer who gets fees knows his bread and butter depends upon his work. He attends to his work and is in his office from early morning until late at night. He is there to attend to his business. You find him there at early dawn and you find him there when it is necessary to light a lamp. I tell you sir it makes a great deal of difference whether a man gets a salary or whether he gets fees. When a man gets a salary and you go to his office at five o'clock in the evening and the door is shut, you knock and it is locked. You go away and come back in half an hour and knock. No one there. That is the way it is in salaried offices. You make a fee of it and when you come to the door you find the office open. Take the farmer do you suppose it makes no ** 342 ** difference to him, with his 30 miles ride to town on business. Half an hour is valuable to him. Do you suppose it doesn't make any difference to him whether the county office is open or not. If he finds the door shut he waits until it is too late to go home that day and he is put to \$2.50 hotel expenses to put up

for the night. I hope the gentlemen will leave the matter as it was yesterday. It was good enough then and is good enough now.

Mr Pemberton –

Mr President, this discussion has arisen on the subject of fear. We offer two propositions for paying County officers. One by salary and one by fees. Now if this Convention adopt either system, you make a constitutional law of paying county officers that the legislature of the state cant change without changing the Constitution. Now I say the people have the right to be left where they can try both methods. Whereas if we place this in the Constitution, provide for the manner of paying county officers in the constitution, the people cant try any other way unless they change the constitution. Now I think that is all wrong. Here are two ways. The legislature may try the salary system, and after trying it may want to decline it. Now, sir, if we put this in the Constitution, what change can the legislature make without changing the Constitution? ** 343 ** I repeat that there is not a single fundamental principle involved in it. It is a question of public pleasure how we shall pay our officers. I don't think a man will attend to his business better if he receives a fee than if he receives a salary. That depends upon the man altogether. If he is a proper man he will attend to his business, if he aint honest he wont.

The President –

The question is on the amendment offered by Mr Douglass.

Motion put and amendment lost.

Mr Pemberton –

I move that the file as reported by the committee of the whole and as amended be adopted and referred to the committee on engrossment

Seconded and carried

Mr Fergus –

Mr President, a resolution

The Secretary –

“The Legislative Assembly shall pass all necessary laws for the prevention and spread of Cholera, small pox or other contagious diseases, and for the prevention cure and extinction of glanders, pleuroneumonia [*sic*], scab, and other contagious diseases among horses, cattle, sheep or other stock

Fergus” ** 344 **

Mr McCormick –

Mr President, I move the resolution be referred to the committee on grazing and stock growing

The President –

There is no committee by that title

(Laughter)

Mr Hunt –

Refer it to the committee on bill of rights

Laughter

Mr Proctor –

Legislative department

The President –

If there is no objection the resolution will be referred to the committee on agriculture

Mr Callaway –

Mr President, I now call for the reading of my preamble offered a little while ago

The Secretary –

“Proposed for the Constitution

Preamble –

We the people of Montana being desirous of abolishing our present colonial system of government and assuming among the States of the Union that just and equal station to which we, as a loyal people are entitled under the Constitution of the United States of America, renewing our patriotic fealty to that Constitution and invoking its protection and guarantees in order to enforce equal taxation, form a more perfect government, establish justice unsure domestic tranquility, provide for the Common defence [*sic*], promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the State of Montana

Callaway” ** 345 **

The President –

If there is no objection the resolution will be referred to Committee No 1. The chair desires to state that he is informed that some one connected with this hall and one of the societies that

they desire to use the hall this evening and make the request that the convention adjourn today at half past three. In order that the hall may be got in readiness.

Mr McCormick –

I move the convention do now resolve itself in committee of the whole for the consideration of general file no 2.

Seconded and carried

The President –

Mr Waterbury please take the chair. ** 346 **

Chairman –

The Committee will please come to order. General file No 2. Relative to State institutions.

Section 1. Educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the State, in such manner as may be prescribed by law.

Mr McCormick –

I move the adoption of the Section.

Seconded and carried.

Chairman –

(reads)

Section 2. The Legislature shall have no power to change or to locate the seat of government of the State, but shall, at its first session, after the adoption of this Constitution, provide by law for submitting the question of the permanent location of the seat of government to the qualified electors of the State, at the general election then next ensuing; and a majority of all the votes upon said question cast at said election, shall be necessary to determine the location thereof. Said Legislature shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast, shall be submitted in like manner to the qualified electors of the State, at the next general election: *Provided*, That until the seat of government shall have been permanently located, as herein provided, the temporary location thereof shall remain at the city of Helena.

Mr Pemberton –

I offer an amendment. To strike out legislature wherever it appears and insert "legislative assembly"

Mr McCormick –

I think that is covered by the general rule adopted yesterday.

Mr Pemberton –

I withdraw the amendment then.

Mr Douglass –

I move the section be adopted.

Seconded and carried

Chairman –

(reads)

Section 3. When the seat of government shall have been located, as herein provided, the location thereof shall not thereafter be changed, except by a vote of two-thirds of all the qualified electors of the State, voting on that question at a general election, at which the question of the location of the seat of government shall have been submitted by the General Assembly.

Mr Callaway –

I have an amendment. ** 347 **

Chairman –

Amend Section 3, line 7, by striking out the words "two-thirds" and inserting in lieu thereof the word "majority."

Mr McCormick –

Second the motion

Carried

Mr Stephens –

I move section 3 be adopted.

Mr McCormick –

I would ask if Section 2 has been adopted –

Voices –

Yes

Mr Stephens –

I move Section 3 be adopted

Chairman –

It is adopted

Mr Pemberton –

No, sir, Mr Chairman, the gentleman from Silver Bow is preparing an amendment

Chairman –

(reads)

“But no proposition for changing the location of the seat of government shall be submitted to the people oftener than once in four years.” This is to be added to the section as it now stands amended?

Voice –

Yes sir

Chairman –

The section would then read as amended

Sec. 3. When the seat of government shall have been located, as herein provided, the location thereof shall not thereafter be changed, except by a vote of a majority of all the qualified electors of the State voting on that question at a general election, at which the question of the location of the seat of government shall have been submitted by the Legislative Assembly. But no proposition for changing the location of the seat of government shall be submitted to the people oftener than once in four years.

Mr Howell –

I move its adoption

Mr Hunt –

I offer an amendment to the ** 348 ** amendment

Chairman –

Strike out in the amendment the word "four" and insert "ten"

Mr Collins –

The question is the same as is included in voting for a change of county seats. I am in favor of the four years system

Mr Hunt –

No, sir, it is quite different. The state may erect very large and expensive buildings, and under this amendment just as the buildings are completed the people may change the capital. Ten years is short enough time, and many of the older states have fixed the time as long as twenty years.

Mr Proctor –

I am opposed to changing the capital in any way except by an amendment to the constitution, I am opposed to giving the legislature or the people the power to move it except by absolute amendment to the constitution.

Mr Hedges –

I am in favor of the first amendment and opposed to the second

Mr Clark –

I am opposed to the amendment offered by the gentleman from Choteau. All who know the history of new Countries are aware of the fact, that the surroundings and circumstances of one place may change in a few years, so as to upset ** 349 ** all our calculations as to the permanency, If we permanently establish the seat of government at one place for a period of ten years, that place may so change in 3 or 4 years, so that the capitol would have to be changed to meet the wants of the people. I am in favor of the first amendment, and fix it so that if at the end of four years a majority of the people of Montana desire to change the seat of government it may be done.

Mr Vivion –

Mr Chairman, I wish to draw up an amendment to the amendment

Chairman –

The question is on the –

Mr Proctor –

Mr Chairman, the gentleman from Gallatin is preparing an amendment

Mr Clark –

The question is on the amendment of the gentleman from Choteau, another amendment is not in order

Chairman –

Yes, another amendment is not in order.

Mr Smith –

The gentleman offered a substitute not an amendment

Mr Clark –

I believe our rules state that a substitute is an amendment

Mr Pemberton –

Question

Chairman –

Right. The question is on the amendment of the gentleman from Choteau to the ** 350 ** amendment of the gentleman from Silver Bow.

Amendment lost.

Chairman –

Now the question is on the original amendment

Mr Vivion –

To which I offer an amendment.

Chairman –

Amendment offered by the gentleman from Gallatin.

“Provided, that no expenditures shall be made in the location of Capitol building until the Capitol is permanently located, and therefore no law shall be passed by the legislative assembly, anything any vote upon the question of the removal thereof.

Vivion”

Mr McCormick –

Mr Chairman, it seems to me that amendment properly applies to the next Section. Part of the amendment I would like to support but I cannot do it in this shape

Amendment lost.

Chairman –

The question recurs to the original amendment offered by the gentleman from Silver Bow

Mr Hedges –

I move its adoption

Seconded and carried

Mr Clark –

I move the adoption of the section as amended

Seconded and carried. ** 351 **

Chairman –

(read)

Section 4. The Legislature shall make no appropriations or expenditures for capital buildings or grounds until the seat of government shall have been permanently located as herein provided.

Mr Callaway –

Mr Chairman, an amendment

Mr McCormick –

Mr Chairman, I have a substitute for the section.

Chairman –

The gentleman from Madison, Mr Callaway offers the following:

“Add to section 4, “And no such appropriation shall be made prior to the year 1900 unless such proposed appropriation shall have first been submitted at a general election to the qualified voters of the state, and their approval thereof be given by a majority of all electors voting at such election

Callaway”

Mr McCormick –

I offer a substitute for the section

Chairman –

The gentleman from Missoula offers the following:

“The legislative assembly of the state shall make no appropriation or expenditure for capitol building or grounds for ten years after the seat of government shall have been established by a vote of the people, as in this constitution elsewhere provided

McCormick”

Mr Clark –

I second the substitute. ** 352 **

Mr McCormick –

Mr Chairman, the object of the substitute is simply to prohibit the legislature of the state, after the seat of government shall have been permanently fixed by a vote of the people, from making any appropriation of public moneys for the erection of public buildings or purchasing grounds for ten years after the seat of government shall have been fixed by a vote of the people

Mr Hedges –

Mr chairman, I move the committee now rise, report progress and ask to sit again

Seconded and carried

Chairman –

Will the President please take the chair.

At 12:30 Convention Called to order

President Clark in the chair

Mr Waterbury –

Mr President, as chairman of the progress committee of the whole. I am instructed to report to the convention, but ask leave to sit again.

Mr Pemberton –

I move the convention do now adjourn until 10 oclock tomorrow morning –

Mr Hedges –

I move to amend by making it half past one this afternoon.

Seconded and carried and original motion carried

The President –

The convention stands adjourned until half past one this afternoon ** 353 **

Twelfth Day – January 25, 1884

Afternoon Session

Convention called to order at 1:30 p.m.

President Clark in the Chair

Roll Call. Quorum present, as follows:

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne		/
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	
Cooper		/
Dixon	/	
Daly		
Douglass	/	
Eaton	/	
Eddy	/	
Ferris		
Fergus	/	
Green	/	
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley	/	
Langhorn	/	
Medhurst	/	
McCormick	/	
McSorley	/	
Merriman	/	
Mills	/	
Maloney		
McClintock	/	
Napton		
Pease		/

Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/ ** 354 **
Savage	/
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

Mr Merriman –

Mr President, I have a resolution

Mr McCormick –

Whats the subject?

Mr Merriman –

Miscellaneous.

The President –

It will require the unanimous consent of the convention.

The Secretary –

“Resolved, that the ladies of the Territory be and are hereby respectfully tendered the privileges of the floor of this convention during our deliberations

Merriman” ** 355 **

Voice –

I move its adoption

Seconded

Mr Mills –

I have an amendment to that the former resolution extending the courtesies of the Convention to officers and gentlemen didn't include the auditor and Treasurer. I move to amend by including them.

Mr McCormick –

I amend by including all members of the legislature

Mr Callaway –

Mr President and I have an amendment, if in order I would amend by including the ex Secretary and the present Secretary

Mr Pemberton –

We have them all here

Mr Callaway –

No sir. We haven't.

Mr Merriman –

I will accept the amendments

Motion put and resolution adopted

Mr Green –

Mr President the report of the committee on schedule. ** 356 **

The President –

It will require the unanimous consent of the convention

Mr Hedges –

I move it be received –

Seconded and carried unanimously

Mr Waterbury –

Mr President, I move the rules be suspended and that the reading of the report be dispensed with

Seconded and carried

Mr McCormick –

Mr President I move you the convention now resolve itself into the committee of the whole for the further consideration of general file No 2.

Seconded and carried

The President –

Mr Waterbury please take the chair ** 357 **

Chairman –

The question is on the substitute

Reads substitute and amendment.

Substitute lost

Chairman –

Now the question recurs to the amendment offered by Mr Callaway

Amendment carried

Mr Pemberton –

I move the adoption of the section as amended

Seconded and carried –

Chairman –

(read)

Section 5. It shall be the duty of the Legislature to make provision, as soon as possible, for a State University, State Asylum, and State Penitentiary: *Provided*, That not more than one of the aforesaid institutions shall be located in any county of this State, the location to be determined by a vote of the electors at large, at any general election; and that the trustees shall be appointed by the Governor, by and with the advice and consent of the Senate.

Mr Smith –

Mr Chairman, I have an amendment

Mr Clark –

Mr Chairman, an amendment.

Chairman –

Amend Section 5 by striking out that clause beginning in line two, making the location to be determined by a vote of the electors at large at any general election

Mr Pemberton –

Second the motion

Mr Clark –

Mr Chairman, my object is this: I cannot conceive, sir, how the question of the location of the public building can be determined in that manner, if the question is submitted to the electors at large. It is reasonable to suppose that the people of a county would like to have one of the important buildings in their county. And it ** 358 ** would hardly be possible that a majority of the electors of Montana would agree upon the location of the building in any one county. I think it would give rise to confusion and the proposition could not be adopted

Chairman –

The question is on the motion to strike out.

Chairman –

There is another amendment, with no name signed to it. Strike out in Section 5. The word “possible” on line 1 and insert in lieu thereof the word “practicable”

Mr Clark –

Before that is put, I don’t know whether the last amendment is clearly understood, and in order that it may be I would ask the chair to read it again.

Chairman –

I will read it again.

Section 5. It shall be the duty of the Legislature to make provision, as soon as possible, for a State University, State Asylum, and State Penitentiary: *Provided*, That not more than one of the aforesaid institutions shall be located in any county of this State, the location to be determined by a vote of the electors at large, at any general election; and that trustees shall be appointed by the Governor, by and with the advice and consent of the Senate.

Mr Clark –

That is the part stricken according to my amendment, beginning with the word “the” on line 2, and ending with the word “election” on line 3.

Mr Van Gasken –

I dont think that was understood by the convention ** 359 **

Chairman –

I think it would be well enough to strike it out now

Mr Eaton –

I don't exactly understand what the amendment was, or how I voted but I move a reconsideration of the vote

Chairman –

A motion to reconsider is not in order

Mr Clark –

I think by unanimous consent we can take another vote on it

Chairman –

Perhaps the chair made a mistake. The amendment was to strike out that clause in Section 5, beginning in line 2. I believe I read that. Didn't read it the last time though, but that was the amendment.

Mr Callaway –

Read it again

Laughter.

Section 5 read.

Chairman –

The part to be stricken out is "the location to be determined by a vote of the electors at large, at any general election"

Callaway –

Hedges, Pemberton, that's the way I voted.

Mr Clark –

Yes, that's right

Mr Pemberton –

Put the motion again.

Motion to strike out carried.

Mr Hunt –

Now Mr Chairman, I call for my amendment.

Mr Collins –

Read the second amendment ** 360 **

Chairman –

I have a couple of dozen of them but we will take this one, Amend line 1 by striking out the word “possible” and insert in lieu thereof the word “practicable”

Mr Callaway –

I move its adoption

Seconded and carried.

Chairman –

Here is the next one. Amend Section 5 by inserting after the word “State” line 2, the words “Not being that county where the capitol is situated.”

Mr Green –

I move its adoption.

Mr Mills –

The chair evidently did not read it right. I ask to have the amendment read again.

Chairman –

Amend Section 5 line 2, by inserting after the word “any” the word “one” also after the word “state” insert, “but none of these institutions shall be located in the same county in which the capitol is located”

Mr Clark –

I call for a diversion of the amendment.

Mr Hunt –

That is an amendment by Captain Mills to my amendment, and I accept the amendment.

Mr Pemberton –

Take the little one first

Mr Howell –

The gentleman from Choteau accepts the amendment, and it only ** 361 ** requires one vote

Mr McCormick –

I think the easiest way out of this difficulty would be for the gentleman from Choteau to withdraw his amendment

Mr Hunt –

I withdraw it

Chairman –

Now the question is to insert after the word “any” in line 2 the word “one”

Mr Callaway –

I move its adoption.

Seconded and carried

Chairman –

Now the question is on the amendment to insert “but none of these institutions shall be located in the same county in which the capitol is located”

Mr Clark –

I move its adoption

Seconded and carried

Chairman –

Here is another, amend Section 5 by inserting the word “same” after the words “located in”

Mr Burleigh –

I will withdraw that amendment.

Chairman –

The next is, Amend Section 5 by inserting after the word “university” the word “one”

Mr Smith –

I withdraw that

Chairman –

I am delighted to hear it. The next is, “Strike out the words ” – “ Well, I don’t know as I can make that out. ** 362 ** I guess it is “possible”

Mr Hedges –

That has been acted upon

Chairman –

Well, the adoption of the section is now in order.

Laughter.

Mr Dixon –

Mr Chairman, I offer a substitute for the section. If the chair will permit me I will read it.

Chairman –

With pleasure,

Mr Dixon –

(reads)

Sec. 5. It shall be the duty of the Legislative Assembly to make provision, as soon as may be practicable, for a State University, State Asylums, and State Penitentiary, and such other State institutions shall be located in any one count in the State, and none of them in the county in which the capital of the State is located.

Mr Callaway –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 6. The Governor shall fill any vacancy that may occur in the offices aforesaid, until the next session of the Legislature, and until a successor to his appointee shall be confirmed and qualified

Mr Cooper –

I move its adoption.

Seconded.

Mr Douglass –

Wouldn't it be proper to adopt Section 5. first.

Chairman –

The substitute was adopted in place of the section.

Mr Clark –

Which now renders Section 6 unnecessary. I move it be stricken out.

Seconded and carried ** 363 **

Chairman –

(reads)

Section 7. The respective counties of the State shall provide, as may be prescribed by law, for those inhabitants, who by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

Mr Howell –

I move its adoption.

Seconded and carried

Mr Smith –

I move section 7 be numbered Section 6.

Seconded and carried.

Mr Vivion –

I move general file no 2. Be adopted as amended

Seconded and carried

Mr Merriman –

I move the committee rise & report general file no 2, back to the convention as amended, and recommend that as amended it be adopted.

Seconded and carried.

Chairman –

Will the President take the chair

Convention called to order at fifteen minutes past two oclock p.m.

President Clark in the chair

Mr Waterbury –

Mr President, as chairman of the committee of the whole I am ** 364 ** instructed to report to the convention and ask until tomorrow morning to write out my report

The President –

If there is no objection the leave will be granted

Mr Langhorne –

Mr President, I move the convention resolve itself into a committee of the whole on general file no 3.

Seconded and carried

The President –

Mr Howell, please take the chair. ** 365 **

Chairman –

The committee will please come to order. General file No 3. Relative to Military affairs.

Section 1. The militia of the State of Montana shall consist of all able bodied male citizens of the State between the age of eighteen (18) and forty-five (45) years, except such persons as may be exempted by the laws of the State or of the United States.

Mr Hunt –

I have an amendment.

Chairman –

Mr Hunt offers the following:

I move to amend by striking out Section one, and insert as follows:

The legislative assembly shall provide by law “

Note – (too much noise and the reporter did not catch the balance of the amendment)

Mr Hunt –

Mr Chairman, my object is to strike out section 1, 2, 3, and 4, and insert the substitute. The report is too long. If we are going to lengthen out the reports this way we will have a constitution as long as from here to Ft. Benton.

Mr Dixon –

It seems to me we will save time if we take the report as it is.

Amendment lost.

Mr McCormick –

I move the adoption of the section

Seconded and carried

Mr Merriman –

I move the adoption of Section 2

Mr McCormick –

Let it be read first ** 366 **

Chairman –

(reads)

Section 2. The Legislature shall provide by law for the organization, equipment and discipline of the militia. The organization shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

Mr McCormick –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 3. The Legislature shall provide by law for maintaining the militia by appropriations from the Treasury of the State.

Mr Clark –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 4. The Legislature shall provide by law for the safe keeping of the public arms, military records, relics and banners of the State.

Mr Callaway –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 5. The Governor shall be Commander-in-Chief of the militia forces of the State, except when the forces are in the actual service of the United States, and shall have power to call out any part or the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion.

Mr Van Gasken –

I move its adoption ** 367 **

Seconded and carried

Mr Smith –

I move that general file No 3 be adopted.

Seconded and carried

Mr Langhorne –

Mr Chairman, I move the committee do now rise and report general file No 3 back to the convention, and recommend its adoption

Seconded and carried

Chairman –

The President will please take the chair.

Convention called to order at three oclock

President Clark in the chair

Mr Collins –

Mr President, I would ask unanimous consent of the Convention that the report of the Committee on finances be received.

Mr Howell –

Mr President, Report of the Committee of the whole. ** 368 **

The Secretary –

“Mr President, I am instructed by the Committee of the whole for the consideration of general file No 3. Relative to military affairs to report the same back to the Convention with the recommendation that it be adopted

Howell
Chairman

Mr Howell –

I move the adoption of the report

Seconded and carried.

Mr Douglass –

Mr President, I move that the convention go into committee of the whole for the consideration of general file No 4.

The President –

Mr Collins requested the unanimous consent of the Convention to introduce the report of the committee on finances, if there is no objection the report will be read

Mr Proctor –

I move a suspension of the ** 369 ** rules, that the reading of the report be dispensed with and that it go on file to be printed

Seconded

Mr Collins –

Just read the report of the Committee and let the balance be dispensed with ** 370 **

The President –

The question is on the motion of Mr Proctor.

Motion to dispense with reading of the report. Carried.

Mr Green –

Mr President, I move we adjourn until morning at ten oclock

Mr Mills –

If the gentleman will withdraw his motion a moment, I would like to ask for leave of absence until Monday evening.

The President –

If there is no objection the gentleman from the Second judicial district will be granted a leave of absence until Monday evening

Mr Smith –

Mr President, I move general files nos 2. And 3 be referred to the Committee on engrossment

The President –

The chairman has not reported on File No 2. Yet ** 371 **

Mr Smith –

Well as to No 3, I make the same motion

Seconded and carried

The President –

There is an invitation here which the Secretary will please read

The Secretary –

Helena, Montana

January 25, 1884

Hon. W. A. Clark

President of the Constitutional Convention:

Sir, I would be pleased to have you and the members of the Convention visit the reduction works of the Helena Mining and Reduction Company at Corbin and Wickes. The Helena and Jefferson railway Company is now running trains daily to Wickes and the trip would afford the members an opportunity to visit the flourishing towns of Jefferson, Junction, Montana City, Clancy, Jefferson City, Corbin, and Wicks. Should you and the members accept you will please let me know the day it would be most convenient for you to go and the hour you would like to start and return

Respectfully
S. T. Houser
President of the Helena and Jefferson Railway Co" ** 372 **

Mr Merriman –

Mr President, I move a committee of three be appointed to make the necessary arrangements,
and accept the invitation

Seconded and carried

The President –

I will appoint Mr Merriman, Mr Eddy and Mr Fergus as the committee

Mr Green –

Mr President, I renew my motion to adjourn.

Seconded and carried

The President –

The Convention stands adjourned until 10 oclock tomorrow morning. ** 373 **²⁹ ** 374 **

Thirteenth Day –
January 26th 1884

Morning Session

Convention called to order at ten oclock

President Clark in the chair

Roll call. Quorum present, as follows:

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		/
Collins		/
Carroll	/	
Callaway		/
Catlin		/
Cooper	/	
Dixon	/	

²⁹ This page is the image of a folder labeled Proceedings. 13th day, Jan. 26, 1884.

Daly		
Douglass	/	
Eaton	/	
Eddy	/	
Ferris		
Fergus	/	
Green		/
Hunt		/
Hedges		/
Howell	/	
Haase		
Hundley	/	
Langhorn	/	
Medhurst		/
McCormick		/
McSorley	/	
Merriman	/	
Mills		
Maloney		
McClintock	/	
Napton		
Pease		/
Pemberton	/	
Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	
Steell		
Stephens	/	
Toole	/	
Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/ ** 375 **	

Mr Smith –

Mr President, Mr Browne wishes me to ask leave of absence for him until Tuesday morning.

The President –

If there is no objection the leave of absence will be granted.

Journal of yesterday read and approved.

Mr Waterbury –

Mr President, the report of the Committee of the whole.

The Secretary –

Mr President, Your committee of the whole to whom was referred general file no 2, relative to state institutions, having had the same under consideration, respectfully submit the following report to the convention.

Amend Section 3, line two, by striking out the words “two thirds” and inserting the word “majority”

Amend Section 3 by adding thereto, “But no proposition for changing the location of the seat of government shall be submitted to the people, more than once in four years.”

Amend Section 5. By striking out the entire section and insert the following “It shall be the duty of the legislative assembly to make provision as soon as may be practicable, for a state institute
** 376 ** state asylum and state penitentiary and such other institutions as may be necessary, and Provided that not more than one of said institutions shall be situated in any county of the State and not one in the county where the capital of the state is located.

Dixon”

Mr Waterbury –

I don’t think I have finished this report

The Secretary –

There is some more

“Strike out Section 6, and renumber Section 7. Section 6.

That with the above amendments the committee respectfully recommend its adoption

Waterbury
Chairman”

Mr McCormick –

Mr President, it seems to me, unless I have failed to hear the exact wording by the chairman of the committee of the whole, that there was a substitute offered and adopted for Section 4.

Mr Green –

Section 5

Mr Pemberton –

The amendment offered by the gentleman from Madison, Mr Callaway, don't appear at all. It was adopted ** 377 ** as an amendment

Mr McCormick –

No sir. It was a substitute

Mr Pemberton –

It was an amendment providing that the capital of the state should not be changed until the year 1900

The President –

It is the recollection of the chair that the substitute or amendment was adopted

Mr Pemberton –

Mr President, I move the report be re-referred to the chairman of the committee for correction

Seconded and carried.

Mr Merriman –

Mr President, I have a report of the select committee to report and am just finishing it

Mr Langhorne –

Mr President, I move that the convention now resolve itself into a committee of the whole for the Consideration of general file No 4.

Seconded and carried

The President –

Will Mr Toole take the chair. ** 378 **

Chairman –

The committee will come to order the committee of the whole has under consideration General file no 4.

Section 1. Believing that the stability and success of a republican form of government depends largely upon the general diffusion of knowledge, and that universal suffrage demands for its safe and proper exercise universal intelligence, it shall be the duty of the Legislature of Montana to establish and maintain a general, uniform and thorough system of public, free, common schools.

Mr Dixon –

Mr Chairman, I think it would facilitate the business of the committee if the assistant secretary would act as secretary of the committee of the whole. I make that motion.

Seconded and carried.

Mr Smith –

Mr Chairman, I move the adoption of Section 1.

Seconded and carried

Chairman –

(reads)

Section 2. The public school fund of the State shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted to the State by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the General Government; and of all other grants of land or money made to the State from the general government for general education purposes, or where no other special purpose is indicated in such grant, all estates or distributive shares of estates that may escheat to the State, all unclaimed shares and dividends of any corporation incorporated under the laws of the State; and all other grants, gifts, devises or bequests made to the State for general educational purposes. ** 379 **

Mr Carroll –

I move its adoption.

Seconded and carried

Chairman –

(reads)

Section 3. Such public school fund shall forever remain inviolate, guaranteed by the State against loss or diversion, to be invested so far as possible in public securities within the State, including school district bonds issued for the erection of school buildings under the restrictions to be provided by law.

Mr Stephens –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 4. The Governor, Superintendent of Public Instruction, Secretary of State and Attorney General shall constitute the State Board of Land Commissioners, who shall have the direction, control and disposition of school lands of the State, under such regulations as may be prescribed by law, but no part of such lands shall be disposed of except after appraisal without regard to any improvements thereon, and at public auction to the highest bidder above the appraised value; nor shall more than one-tenth part of such lands be exposed to sale in any one year.

Mr Stephens –

Mr Chairman –

I have an amendment.

Chairman –

The gentleman from Missoula offers the following amendment:

Amend Section 4. General file No 4 by striking out all after the word “law” on 3^d line and insert the following, ** 380 ** “Provided, the disposition of such school lands shall be limited to occupation and purchase by actual settlers, in tracts of 160 acres each, at a maximum price of \$2.50 per acre. Provided such lands are not within two miles of any town or city

Mr McCormick –

I second the amendment

Mr Clark –

Mr Chairman, I think it is inexpedient to encumber this section, with any restriction of that kind, for the reason that as I understand it, the sections of land which are proposed for the benefit of school purposes are not all arable lands. I have no doubt that there are very many sections scattered over the state of Montana that are not suitable for settlement or cultivation. There are many sections of timber lands and grazing lands that would never amount to anything as tillable property. And for those reasons I don't think it is right to adopt the amendment. Those lands that are incapable of being cultivated, if this restriction is not put upon them, might be advantageous to parties who would buy them or ** 381 ** for grazing purposes.

Mr Hedges –

Mr Chairman, I trust this amendment will not prevail, I believe that these tracts of land should be sold after appraisal at auction and to the highest bidder, without regard to the improvements on them. There have been restrictions in many of the states which I think unwise to introduce here. For instance in the State of Nebraska where they have perhaps as much diversity in the value of their lands as anywhere else, has inserted in its Constitution the provision that none of its school lands shall be sold for less than seven dollars per acre. It has always been the desire in every state where there have been tracts of school lands, to make as much as possible out of them for the school fund. I think it is unwise and injudicious to say the price of our school lands shall not be increased beyond a certain price. We want all that is possible to be derived from that land for the purposes to which it is to be donated; to utilize those lands now for the benefit and welfare of future generations, I am ready to concede the advantage to be ** 382 ** derived by having these lands sold to actual settlers at reasonable prices, in order to encourage the settlement and cultivation of the land, but that only subserves a transient need. Whereas, if we sell the lands to the highest bidders it goes to the purchasers, and is improved and the public receive a revenue from it forever.

Mr Cooper –

Mr Chairman, I want to say just one word on this proposition, it seems, to me, sir, the amendment offered by the gentleman from Missoula is for the special benefit of those persons who are now on the school lands in the Territory. I have in my own mind many pieces of land in our own valley worth from twenty to a hundred dollars an acre. Those lands have been occupied by people who knew very well they were school lands. I know of school lands in our section of country that would sell under the hammer for one hundred dollars an acre. And the valleys in Montana are so limited that if the amendment prevails the funds realized from the school lands throughout the country will be insignificant and ** 383 ** amount to nothing. Therefore I hope the original section as read by the chair will be adopted. I can see where, if we sell these lands to the highest bidders, where Montana will have in a very few years, a school fund that will be a credit to the future state, and I can see where, if the amendment is adopted, where our school fund will amount to comparatively nothing. I am opposed to the amendment.

Mr Stephens –

Mr Chairman, I think, as a matter of course, that we are all trying to get at what is for the best interest of the people. In any subject that may happen to come before the convention, certainly that is my motive, and that is the motive with which I offered this amendment. As far as the maximum and minimum rates are concerned, that I care little about. I hope that my amendment goes a little more to substantial things than whether there is to be simply a dollar or dollar and a half an acre paid here or there. I care little about that, although it amounts to something in the end. There is no question about the truth of ** 384 ** what the gentlemen have state here. Mr Chairman, I am in favor of getting all that is possible out of the school lands

for the school fund. I don't got one whit behind any gentleman on the floor on that proposition. I don't wish to see the school lands of the state frittered away, or taken away from the control of the people. Nothing of the kind, sir. As far as Mr Cooper stated, that there are persons now on the school lands of his county, who, if this amendment prevails, will have a great advantage over some other portions of its population, as to that remark, sir, all I have to say, is, any person who now occupies portions of school lands are trespassers, Naked trespassers, and have no rights under this amendment. This amendment speaks of actual settlers. I say, Mr Chairman, and I hope the gentleman will take it for something, because these men really have no right, I say the very spirit of this amendment is to preserve the rights of every man raised upon the soil of this state. That is its particular object. And the only way that can be done is by having these lands ** 385 ** parceled out in small parcels to individuals and heads of families. That is the only way this matter can be done. Sir, this was always the policy of the United States government and it was only debarred from us when we commenced to build Continental railroads. But, sir, the Congress of the United States are now coming back to the old rule, and that is there should be a limited amount of land given to any person in the United States, and that those lands shall not be sold for the benefit of corporation of any kind or class whatever. Why, sir, California today suffers from the policy introduced in that state of issuing large tracts of lands into the hands of certain individuals. In Colorado today there are men who hold more than two townships of land, to the head of one family. Now, Mr Chairman, you take two townships of land and divide it up into 160 acre tracts and what will you have. Give 160 acres to each head of a family and what will be the result. You will have 144 families situated upon 144 tracts of ** 386 ** land. That is what you will have. Now, Mr Chairman and gentlemen of the Convention, I have no personal interest in this matter, But I will ask the gentlemen if it is any better for the State of Montana, that 144 heads of families should be placed upon 144 separate tracts of land, than that one man should own that same country? Which, I ask, is to the best interest of the state? Which system shall we adopt in reference to that. It appears to me, Mr Chairman, that without the amendment, or some such amendment as this, I am not particular as to its language. I am not particular as to my amendment, if it will only go to the substance of the matter. I say if we don't adopt an amendment something in this character, we will be doing wrong. Something like that has got to be placed in the section. The section reads, "under such regulations as may be prescribed by law." It appears to me, Mr Chairman, these words "under such regulations as may be prescribed by law," are not a sufficient modification ** 387 ** of the power before granted in the section. The words used prior to that supposed modification are, "who shall constitute a state board of land commissioners," "who," – to wit, the state board of land commissioners – "shall have the direction, control and disposition of school lands of the State." These men shall have the direction, control and disposition of the school lands of the state. That, Mr chairman, is a strong power, but I say, under such rules and regulations as may be prescribed by law, is not by any means any modification of that power. These rules might be the very manner of the application to give the lands, and the whole subject matter is placed in the hands of these persons. I say, sir, that is not a sufficient modification of that power. I say these words vest a greater power than they imply. If you want an illustration of the power of such words take the language of the resolution of the legislative assembly of Montana Territory

under which the Secretary of the Territory claims to do the printing of this convention. If that is the result ** 388 ** what will it be in the case of the land commissioner. There is no restriction placed upon them at all. They have the full control, direction and disposition of these lands, to wit, it is in their power to sell these lands at their appraised value. That is all the restriction I see in it. Sir, the school lands of this state will amount to about two million acres as near as I can figure it. In our county we have 30 townships of surveyed land, and we have four times as much land in the county that is now unsurveyed. I say we have four times as much unsurveyed land in our county as we have surveyed. Each township covers two section. Now I presume when the lands are surveyed we will have 120 townships. We have, sir, then 1280 acres of lands granted for school purposes in each township. 120 townships at 1280 acres to a township will give to that county 153600 acres of school land. Now, we take the 13 counties of Montana, if you will make the calculation as I do, it will come within a fraction of making two million acres of school land which are to be sold ** 389 ** for the benefit of the school fund of the state. There is tow million acres of land, now, giving to each individual 160 acres, will make a home for 12,500 families. Now, sir, which is the best policy? To adopt a policy that will give homes to 12,500 families in the state of Montana, and give to each head of a family 160 acres of land, or allow these lands to be sold by the board of land commissioners, no matter who they may be, I care nothing about that, to three or four or half a dozen individuals or corporations? Which is the best policy? The best system? A policy which will place 12,500 families on the lands, or a policy that will allow all that land go into the hands of 100 persons? Mr Chairman, I think there can be no discussion as to which is the best policy. None at all, sir. Now, Mr. Chairman, suppose these lands are sold for \$2.50 per acre. It is stated that if they are sold for \$2.50 per acre they will not bring as much money as if sold at public auction. Perhaps not and perhaps they will. Perhaps they may not do it at ** 390 ** first, and they might do it at first. It is very difficult to tell. Admitting that on the first sale of the lands they don't bring as much, it appears to me they will bring more in the end. If you can get \$5.00 per acre for the lands and place the lands in the hands of 40 individuals, it wont amount to as much by far, as if you could place 12,500 families on it at \$2.50 per acre. By giving it to the families you would make money from taxes on buildings manufactories, and commerce generally. That is what builds up states and cities and towns. It is not the putting of a large mass of lands into the hands of a few persons. The lands should be used for the purpose of production. And where wealth is more equally distributed and not divided up amongst a favored few, you will find a healthier condition of things. Now, to come right down to the money matter again, some of the gentlemen have had in their minds that these school lands will sell for \$20.00 an acre. Where will you find it? I will admit that there are instances where it may be done, if you ** 391 ** take lands close to town. Within two miles of Helena, for instance, you take sir,

Voice –

Take a drink of water

Mr Stephens –

Did you speak, sir, - Take lands within two miles of Helena, and no doubt, sir, it will be enhanced in value. But if you take the general run of lands away from these town sites and I assure you the seller is paying the full price at \$2.50 an acre. That is a good policy to all and it will injure none. It is a policy that has brought immigrants to the United States, and beaten its path to wealth and prominence. Now, sir, gentlemen, perhaps you may sell a few acres of land near Helena at \$20.00 an acre, but if you will look at the amendment you will see that I have considered that proposition also. You will find in the amendment – Will the chair please read the head of the amendment?

Chairman –

“Provided such limitations shall not apply to lands within two miles of any city or town”

Mr Stephens –

Now, the mass of all school lands in Montana are away from towns, because as we only get two ** 392 ** sections in each township and as a township is six miles square, it is difficult for more than two to come within two miles of any town or city. Now where lands are within two miles of any town or city, it leaves that question open and those lands may be sold for \$16.00 \$20.00 or \$25.00 per acre. Now, sir, it appears to me there is no better way of building up a state than by allowing a large amount of settlers to settle on its lands. But, sir, it is an injury to a state to allow a few persons to buy two thirds of the lands of the state and live in New York or California. It has the tendency to make the rich richer and the poor poorer. It is not right to live in a state where our laws make a very few men rich and make a multitude of poor men. Adopt a policy whereby you can sell the lands to the actual settler for a good price and we will have a free and independent race of people upon the soil of Montana. Gentlemen of the Convention, I think in all justice and right we should adopt this measure and I cannot sit in my seat without ** 393 ** letting my ideas be known to the Convention. That is all I have to say about it. Adopt which you please. One will not suit me as well as another, but I am only one member of the Convention and I have stated my views on the amendment.

Mr McCormick –

Mr Chairman, I have very little to say, sir, but it seems to me the amendment is more in the nature of a bill that would properly come before the legislature than an amendment to go with the Constitution. It is intended to limit the lands to persons who have gone on the school lands since the public surveys have been made, and certainly it is intended for their benefit. Now, sir, it is a well known fact to every member of the convention that nearly all of the available school land in the Territory is in the possession of actual settlers. Most of these men have gone on the land since the public surveys and there are a few instances where persons got possession at the time the surveys were made. Now, sir, under the law regulating the disposition and title of school lands, persons who were in possession ** 394 ** of the lands prior to the public surveys, and found them valuable and located and improved those lands, should perhaps have the first right. But it seems to me the whole question cannot be considered in any other light, except

that those men have in violation of the law gone upon the public school lands and improved them, and they are trespassers upon them. Under the law they are trespasser. I will admit that there is to be considerable revenue derived from actual settlers, but sir, I am opposed to fixing a maximum value at which these lands shall be sold. If the gentleman would fix his maximum rate at \$100 an acre I would be opposed to it. Because I believe it is a matter that should be left to the Board of land commissioners provided for in the section, that these lands should be sold to the richest bidder for cash, it matters not what the improvements may be. I think it would be in the nature of a legislative enactment for us to adopt the amendment and whether those persons who have in violation of the law gone upon and improved these lands. For those reasons I shall oppose the amendment.

Mr Hedges –

Mr Chairman, I merely wish to ** 395 ** add one word to what I have stated before, and that is that these public lands include at least 72 sections which shall have been granted to the state to be found out of the Territory, under a special law of Congress, and which fixes the maximum at \$2.50 per acre. Now, as to that part we cannot add any sort of an amendment which the gentleman proposes, because the maximum is already indicated of how the lands shall be disposed of. Now, as to the idea that these lands could come into the hands of land speculators is hardly preventable from the manner and circumstances with which these lands come to use. They don't come to us in a body. Section 16 and 6 in each Township is the limitation and how is a land grabber, or a corporation going to acquire a great amount of land in one place, it is impossible. They don't want their land separated and scattered. If there is to be any speculation at all in this matter it is to be in the light which the gentleman proposes. The men who have squatted on the lands are the trespassers who wish to acquire land at \$2.50 per acre which may be worth \$300 or \$400 ** 396 ** per acre. That is the very essence of speculation. It is robbing the coming generations, and it's the worst kind of speculation, in my opinion, that was ever devised.

Mr Stephens –

Mr Chairman, I want to answer Mr McCormick. It seems to me we ought to be correct about this. There is no question, Mr Chairman, but that the men on the school lands today are trespassers, and have no business there, and there is no reason why the law should take any more notice of them than anyone else. But as far as that is concerned, as a legal proposition there is no one on those lands.

Mr McCormick –

Do I understand the gentleman to say there are no school lands in the possession of settlers?

Mr Stephens –

I say they are. But in the eye of the law, – as a legal proposition – those lands are not in the possession of settlers, as far as the law is concerned they are naked trespassers

Mr McCormick –

If this amendment should be incorporated in the Constitution, wouldn't it give to the persons in actual possession of these land the right to purchase them **397 ** at the maximum sale of \$2.50 per acre at the pleasure of the board of land commissioner?

Mr Stephens –

No sir. Not at all. Only the actual seller. An actual settler is an actual settler –

Voices –

Good – very good – go on.

Mr Stephens –

Mr Chairman, this amendment does not give that right to any one but actual settlers. All it treats of is the actual settler. The amendment does not say that the present possessor is the actual settler. Persons who come upon lands under rules prescribed by the legislature is an actual settler. Now, sir, I wish to speak of the 72 sections the gentleman from Lewis and Clarke spoke about, now, I submit, Mr chairman that those 72 sections have nothing to do with the question under consideration. It has nothing to do with the common school lands of the State. Those 72 sections, the 16th and 36th section in every township were given in 1881, by the general government, to the Territory the University purposes. It has nothing to do with the school lands of the state. Now the gentleman from Lewis ** 398 ** and Clarke also spoke about these 16th and 36th sections being so separated in every township, and because they were so separated and not adjacent to each other, that therefor the speculator wouldn't buy. Why, sir, what does the speculator care whether the land is adjacent or not. It makes no difference to him where the sections are, whether they are here or there or any where, so long as he can buy them.

Chairman –

The question is on the amendment of Mr Stephens –

Amendment lost

Mr McCormick -

I move the adoption of the section

Mr Dixon –

Mr Chairman, I have an amendment.

Chairman –

Amend Section 4, by inserting “and restrictions” after the word “regulations” on line 3

Mr McCormick –

I move its adoption

Seconded and carried

Mr Douglass –

Mr Chairman I have an amendment

Chairman –

Amend Section 4. By inserting after the word “of” on line 3, the words “all “public” ** 399 **

Mr Douglass –

That will make it read the “disposition of all public school lands

Mr Clark –

I move its adoption

Seconded

Mr Proctor –

I will state if that amendment is adopted it will involve the necessity of making a special provision for the sale of University lands or anything of that kind.

Mr Douglass –

My only object in offering the amendment was to make the section appear a little more clear

Amendment lost

Mr Callaway –

Mr Chairman – an amendment

Chairman –

“Add to Section 4. “Provided that not more than 160 acres of agricultural land shall be sold to any one person for his use.”

Mr Pemberton –

I move its adoption

Seconded

Mr Medhurst –

Mr Chairman, I move to amend by striking out the last four words

Mr Smith –

I move its adoption

Seconded and lost

Mr Smith –

Now, I move the adoption of the Section as it stands amended ** 400 **

Seconded and carried.

Chairman –

(reads)

Section 5. The interest on all invested school funds of the State shall be apportioned to the several school districts of the State, in proportion to the number of children and youth between the ages of five and twenty-one years, but no district shall be entitled to such distributive share that does not maintain a public free school for at least three months during the year for which distribution shall be made.

Mr Smith –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 6. It shall be the duty of the Legislature to provide by taxation, or otherwise, sufficient means in connection with the amount received from the general school fund, to maintain a public, free, common school in each organized district in the State, for at least three months in each year.

Mr Smith –

Mr Chairman, I move to amend by striking out the last clause “for at least three months in each year”

Mr McCormick –

I move its adoption

Seconded and lost

Mr McCormick –

I move the adoption of the section

Seconded and carried

Chairman –

(reads) ** 401 **

Section 7. The public free schools of the State shall be open to all children and youth between the ages of five and twenty-one years, and the Legislature may provide for the compulsory attendance at the public schools of all children of sufficient mental and physical ability, between the ages of five and fifteen for at least three years, unless educated by other means; and the Legislature may further provide, under proper regulations and by proper means, for the industrial and economical education of all children and youth before arriving at their majority.

Mr Hunt –

Mr Chairman, I offer an amendment

Mr Vivion –

I have an amendment.

Chairman –

The gentleman from Choteau, Mr Hunt, moves to amend Section 7. By striking out all after the word “years” in line 7

Mr Vivion –

I withdraw my amendment. It is the very same thing

Mr Howell –

I move its adoption

Mr Pemberton –

I offer a substitute for the amendment.

Chairman –

The gentleman from Silver Bow, Mr Pemberton offers the following:

Amend Section 7 by striking out the words “and the legislature may provide for the compulsory attendance at the public schools for all children of sufficient mental and physical ability between the ages of 5 and 15 years for ** 402 ** at least 3 years, unless educated by other means.”

Mr Pemberton –

I will withdraw my substitute and support the amendment of the gentleman from Choteau

Amendment carried.

Mr Callaway –

I have an amendment

Chairman –

The gentleman from Madison offers the following. Amend Section 7. By inserting after the word “youth” on line one, the words “without regard to color.”

Laughter

Mr Pemberton –

This convention is color fluid

Laughter

Mr Vivion –

I move the adoption of the Section

Seconded and carried

Chairman –

(reads)

Section 8. In all school elections women shall be entitled to vote under the same restrictions as men, and they shall also be eligible to any office under the school law, on the same terms as men.

Mr McCormick –

I move the section be stricken out. It is incorporated in the report of the committee on rights of suffrage and it don't belong here.

Seconded and carried. ** 403 **

Mr Collins –

Mr Chairman, I offer a section in lieu of Section 8.

Chairman –

The gentleman from Choteau Mr Collins offers the following in lieu of Section 8.

Section 8. The public school system shall include primary and grammar schools and such high schools evening schools, normal schools, and technical schools as many be established by the legislative assembly or any municipal or district authority, but the entire revenue derived from the State school fund and the State school tax shall be applied exclusively to the support of primary and grammar schools”

Mr Hedges –

I move its adoption

Mr Clark –

Mr Chairman, I move the committee now rise, report progress and ask leave to sit again

Seconded and carried

Chairman –

The president will please take the chair. ** 404 **

Convention called to order at 12:15 p.m.

President Clark in the chair.

Mr Toole –

Mr President the committee of the whole have instructed me to report progress to the convention and ask leave to sit again

The President –

If there is no objection the report of the chairman will be received and accepted

Mr Eaton –

Mr President, I move the Convention take a recess until two oclock this afternoon

Seconded.

Mr Merriman –

Mr President, I want to offer the report of the special committee

The President –

The report will be read

The Secretary –

“Mr President – Your select committee to whom was referred the duty of conferring with Mr S. T. Hauser, as to what time the members shall visit the Helena reduction works, Jefferson, Corbinville, and Wickes, beg leave to report that they have conferred with Mr Hauser, who reports that he is ready to visit the above mentioned ** 405 ** places when on Saturday or someday the 2d or 3d proximo, and leaves to your own discession [*sic*] which of the days and the hour, you desire to start. And he desires to know your decision at the earliest possible moment

Merriman
Chairman”

The President –

What is the pleasure of the Convention

Mr Proctor –

Mr President, I move the report be accepted and the line be fixed on Sunday the 3d.

Seconded.

Mr Vivion –

I move to amend by fixing it on Sunday the 3d at 10 oclock

Seconded

Mr Eaton –

Mr President, If this motion is to be carried I think it will be well to specify the time. There is a diversity of times. The old line and the railroad train. I think one system or the other should be designated in order to give Mr Hauser the exact line we wish to leave the depot

Mr Proctor –

Old time.

Mr Eaton –

That would be 10:35, according ** 406 ** to the railroad time

Mr Vivion –

Make it convention time.

The President –

If there is no objection the invitation will be accepted for the 3d by the time fixed by the convention

Mr Callaway –

I am opposed to this skylarking business

Mr Langhorne –

Mr President, I move to amend by making it the day after the Convention adjourns

Seconded

Mr Eaton –

Mr President, I suggest that the passage of the amendment involves a very grave charge to this body. It is a discourtesy to the gentleman who wishes to do us a kindness. It is not right after accepting his invitation to treat it in this manner. It is proper that he, in all courtesy, should have a number of days notice of the line we desire to start, so that he can perfect his arrangements.

Mr Langhorne –

Mr President, I certainly meant no discourtesy at all. I want to accept the invitation, and meant ** 407 ** to accept, is when I offered the amendment, by fixing the time after the adjournment of the convention and when our labors were at an end. I certainly meant to accept it in good faith

Mr Vivion –

Mr President, I think the day should be fixed certain. We don't know when we will adjourn. Mr Houser has got to make arrangements and preparations and the day should be fixed certain

Mr Merriman –

Mr President, he should be notified at least 3 or 4 days before, so he can arrange it

Mr McCormick –

I hope the gentleman will withdraw his amendment.

Mr Langhorne –

I withdraw it

The President –

The question on the motion to fix the day on Sunday the 3d, at ten oclock in the morning

Carried, and original motion carried

The President –

The question is now on the motion of Mr Eaton to adjourn until two oclock this afternoon

Carried ** 408 **

The President –

The Convention stands adjourned until two oclock this afternoon.

Afternoon Session

Convention called to order at two oclock

President Clark in the chair

Roll call. Quorum present as follows:

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne		
Collins		/
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass		/
Eaton	/	
Eddy	/	
Ferris		
Fergus	/	
Green	/	
Hunt	/	
Hedges	/	
Howell		/
Haase		

Hundley	/	
Langhorn	/	
Medhurst		/
McCormick	/	
McSorley	/	
Merriman	/	
Mills		
Maloney		
McClintock	/	
Napton		
Pease	/	
Pemberton	/	
Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	
Steell		
Stephens	/	
Toole	/	
Thornton		
Vivion		/
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 409 **

Mr Hedges –

Mr President, I would like to ask the unanimous consent of the Convention to present a petition pertaining to the question under discussion, from Miles City. It pertains to the school law, and perhaps it will be best to have it read.

The President-

The gentleman asks unanimous consent to introduce a memorial. If there is no objection the memorial will be read

The Secretary –

To the honorable members of the the [sic] Convention assembled at Helena M.T. for framing a State Constitution.

We the undersigned citizens of Custer Co M.T. most respectfully petition your honorable body to make the following or similar provision in the Constitution you are about to frame.

“Neither the legislature nor any County, City, town, township, School district or other public corporation, shall ever make any appropriation or pay from any public fund whatever anything in aid of any church or Sectarian purposes, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the ** 410 ** State or any public Corporation to any church or for any Sectarian purpose”

Mr McCormick –

Mr President, I move that the petition be referred to the committee on education

Seconded

Mr Dixon –

Mr President, I move to amend by referring it to the committee of the whole

Seconded

Mr McCormick –

Mr President, all I have to say about it is that such a proceeding as that was never heard of in a legislative body where you refer a petition to the committee of the whole, when the house is not in committee of the whole and it is not known that we will be in committee of the whole on that subject.

Mr Dixon –

Mr President, I am free to confess that I am not posted in parliamentary rules, but I am looking to get along with the business before us. If it is proper I think the petition should go to the committee of the whole and be disposed of.

Mr Proctor –

Mr President , the amendment of the gentleman from Silver Bow is perfectly proper. It is in the province of the convention to do whatever it chooses and ** 411 ** in as much as the subject matter of the petition is at this very time under the consideration of the convention, the committee of the whole is certainly the proper place to refer it, and the matter will be disposed of entirely perhaps, before the committee on education has any chance to act on and report it.

Mr Waterbury –

Mr President, I offer the report of the committee of the whole

Mr McCormick –

Mr President our rules provide that all memorials, resolutions and petitions presented to the Convention by any member shall be referred to the proper committee. Now sir, the committee on education is the proper committee for this petition to be referred. I do not wish to be facetious about this thing, but such a thing as referring this petition to the committee of the whole, I repeat, is unprecedented in legislative bodies.

The President –

By reference to rule 36, the gentleman will see, it bears upon this question. When a motion is made to refer any subject and different committees should be proposed the question shall be taken in the following order, 1st The Committee of the Whole Convention, 2^d, The Standing Committee, 3^d, A select committee.” Hence the chair is ** 412 ** of the opinion that the amendment by the gentleman from the Second District, Mr Dixon, is in order. The question is on the amendment to refer the memorial to the committee of the whole.

Carried

The President –

Now the question is on the original motion as amended

Carried

The President –

The memorial is referred to the Committee of the whole.

Mr Carroll –

Mr President, I offer a resolution

The Secretary –

“Resolved that the committee on engrossment and enrollment be assigned a clerk to assist them in the performance of the duties pertaining thereto

Carroll”

Mr Pemberton –

I move its adoption

Seconded and carried

The President –

A clerk will be assigned.

The President –

We have here the report of the committee of the whole on general file no 2, which the Secretary will please read ** 413 **

The Secretary –

Mr President, Your committee of the whole to whom was referred general file No 2. Relating to State institutions respectfully submit the following:

1st Amend Section 3 in line 2 by striking out the words “two thirds” and inserting the word “majority”

2d Amend Section 3. By adding thereto “But no proposition for changing the location of the Seat of government shall be submitted to the people oftener than once in 4 years.”

3d Amend Section 4. By adding thereto “And no such appropriation shall be made prior to the year 1900 unless such proposed appropriation shall have first been submitted at a general election to the qualified electors of the state and their approval thereof be given by a majority of all electors voting at such election.”

The Secretary –

That’s all

Mr Waterbury –

No sir.

The Secretary –

“4th Amend Section 5 by striking out the Section and substituting the following:

Section 5. It shall be the duty of the legislature to make provision as soon as may be practicable, for a state University, State asylum and state penitentiary and such ** 414 ** other state institutions as may be necessary. Provided that not more than one of such institutions shall be located in any one county in the State, and none of them in the county in which the capital of the State is located.

5th Amend by striking out Section 6 and renumber Section 7. Section 6.

With the above amendments we respectfully recommend General file No 2 relating to State institutions and public buildings, be adopted as amended by the Constitutional Convention

Waterbury
Chairman.”

The President –

What is the pleasure of the Convention

Mr Toole –

I move the report of the Committee of the whole be adopted

Seconded and carried.

Mr Smith –

Mr President, I move to amend Section 3 of the report of the Committee of the whole by striking out all after the word “change” in line 2.

The President –

Will the gentleman please send up his proposed amendment in writing

Mr Burleigh –

Mr President, I desire to ask a question. That is, whether when the report of the Committee of the whole is ** 415 ** made to the Convention and the motion is carried to adopt it, whether that is the last time this Convention acts upon the matter proposed to be included in the Constitution, or whether after it has gone to the Committee on engrossment and has been engrossed and returned to the Convention it then comes up for final passage

The President –

After the report goes to the Committee on engrossment there can be no further amendments offered except by the unanimous consent of the Convention. It then comes up on final passage and the ayes and noes will be taken

Mr Toole –

I would call the attention of the President to rule No 25. Upon the subject.

Mr Proctor –

Mr President, the rule in legislative bodies is that amendments can be made after engrossment. It is for the purpose of getting the record entirely correct. After engrossment amendments may be made, but not after enrollment. However, after a bill has been engrossed it can only be amended by the appointment of a committee of one, usually for the purpose of amending further and with specific instructions. If any error is formed in the bill as it has been engrossed, inasmuch as the engrossed copy is a law – if any error is ** 416 ** found in the engrossed copy it can only be amended by referring it to a committee of one with specific instructions, that is, with instructions to so amend by inserting or striking out certain words. And that only requires a majority vote. It does not require unanimous consent.

Mr McCormick –

Mr President, I desire to say that if a bill has been reprinted back by the Chairman of the committees of the whole and amended. That any time after the report has been adopted of course a vote on the adoption is to adopt the amendments agreed upon in the committee of the whole – after the report is made and adopted by the Convention and before the report goes to the committees on engrossment it is subject to further amendment. So if any member desires to amend the report, now is the time to amend it. After it is engrossed no amendment can be made except by unanimous consent.

The President –

That is the opinion of the chair.

The Secretary –

“Amend Section 3. General file No 2 by striking out all after the word “change” in line 2.

Smith ** 417 **

Mr Pemberton –

How would that leave the Section

Mr Smith –

Simply to leave the seat of government. When the seat of government is located as hereinafter provided it shall not thereafter be changed

Mr Proctor –

I move the adoption of the amendment.

Mr Hedges –

Second the motion.

Mr Smith –

Mr President, my object in making this motion to amend the section is that the seat of government shall remain permanent. When the seat of government of the State of Montana is once located and you know where it is when you lay down at night, when you get up in the morning you will know where to find it. I say the section as it now stands, permitting the seat of government to be moved by a majority vote – and that the vote may be taken every four years, is something that should not be put into this constitution. There is no reason on earth why the seat of government should not be permanent. They cant urge the reason that they ** 418 ** urge as to county seats. That the county seat shall follow the flow and majority of the people of

the county, or shall be in the center of the county. They cant urge that in the question of the seat of government of the State. The only question that should enter into a matter of this kind is to have the seat government permanently located in a place where the people of the state can get to it and get away from it when necessary. The question of cash and expenses does not and cannot enter into the question of the seat of government, as in the case of a county seat. We have no records coming to the seat of government. We have no witnesses and jurors, claiming mileage and expenses in this question. We have the state officers who have to come from their homes sometimes and that the only question that come up. This idea that the seat of government of the state should be situated in the metropolis of the state is erroneous. If we stick it in the mountains with proper hotel accommodations, we have it in as good a position as through it were in the metropolis of the state, you have the same costs wherever the seat of government may be, and whenever you ** 419 **take it away from a city or metropolis you take away from the legislative assembly, a great many tricks and corruptions, that would not be around it in a small place. I say it don't matter where the seat of government is located. There is no more costs in going to one given point in the state than to another, because there is only so many men to go in any event, and you may take any given point and there is very little difference in the costs of getting to it. The question of economy cannot enter into it. The question that it should be located at the metropolis is frivolous. The metropolis may fluctuate, and I hope the gentlemen of this convention will not engraft in the Constitution a fundamental law, that when we lay down at night and get up in the morning we will find the seat of government moved and we will have to hunt for it in some remote corner of the state. I hope the seat of government when it is located, will be permanently located in the State of Montana.

Mr Cooper –

Mr President, I hope for the convenience of the gentleman from Beaverhead the committee who have in charge the matter of highways will ** 420 ** erect a system of guide boards for his particular benefit.

Laughter.

The President –

The question is now on the amendment.

Mr Smith –

Ayes and noes.

Mr Cooper –

Ayes and noes.

Mr Burleigh –

Mr President, I would like to have the section read as amended and as it was before it was amended, and as it was before it was amended

Mr Vivion –

MR President, I would like to have the clerk call my name. I have been absent on business

McCormick –

I object

Pemberton, Callaway, Toole, Van Gasken, Waterbury, Hunt –

I object.

The Secretary –

Section 3. file 2 as reprinted by the committee as follows.

“Section 3. When the seat of government shall have been located as herein provided, the location thereof shall not thereafter be changed except by a majority of all the qualified electors of the state ** 421 ** voting thereon at the general election at which the question of the location of the seat of government shall have been submitted by the general assembly. But no proposition for changing the location of the seat of government shall be submitted to the people oftener than once in four years.”

The President –

Now read it as amended

The Secretary –

Amend Section 3. By striking out all after the word “changed” in line 2, “When the seat of government shall have been located as herein provided the location thereof shall not thereafter be changed.”

The President –

The secretary will call the roll. Those in favor of the amendment as their names are called will say aye, those opposed no.

Constitutional Convention

	Aye.	No.
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Abascal	/	
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Burleigh	/	
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Browne		
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Collins	
Carroll	/
Callaway	/
Catlin	/
Cooper	/
Dixon	/
Daly	
Douglass	
Eaton	/
Eddy	/
Ferris ** 422 **	
Fergus	/
Green	/
Hunt	/
Hedges	/
Howell	/
Haase	
Hundley	/
Langhorn	/
Medhurst	/
McCormick	/
McSorley	/
Merriman	/
Mills	
Maloney	
McClintock	/
Napton	
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	/
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	
Van Gasken	/
Waterbury	/
Mr. President	/

Mr Douglass –

Mr President, I have just arrived and do not know what the proposition is

Mr McCormick –

I hope the gentleman will be excused from voting

Mr Douglass –

I would prefer to be excused

The President –

You will be excused from voting ** 423 **

The President –

The result of the vote is ayes 3, noes 29. I declare the amendment lost

Mr Pemberton –

The President I move the file as amended be adopted and referred to the committee on engrossment.

Seconded

Mr Hedges –

Mr President, I would like to offer an amendment simply for the insertion of a single letter. I am informed by Colonel Hundley that it was his intention the word “asylum” should be written “asylums”, it covers not only insane asylums but deaf and dumb and state asylums. This makes it in the singular, “state asylum” as if all the poor unfortunates should be confined in one place. I would like to have that change made.

The President –

Will the gentleman put his amendment in writing

The Secretary

“In line one, section 5, instead of the word “asylum” insert “asylums”

Hedges” ** 424 **

Mr Pemberton –

I move its adoption

Seconded and carried

The President –

The question is now on the adoption of general file No 2, as amended, and its reference to the engrossing committee

Motion carried

The President –

General file No 2 is referred to the committee on engrossment.

The President –

While I think of it Mr Eddy requested me to ask leave of absence for him until Tuesday evening. If there is no objection the leave of absence will be granted

Mr Proctor –

Mr President, I move the Convention do now resolve itself into the committee of the whole for the consideration of general file No 4 –

Seconded and carried

The President –

Will Mr. Toole please take the chair ** 425 **

Chairman –

The committee will please come to order. When the committee rose, we had under consideration the substitute for Section 8, offered by the gentleman from Choteau, Mr Collins. I believe the motion to adopt the section was seconded. Are you ready for the question?

Mr Burleigh –

Mr chairman, this amendment provides that the entire reason derived from the State school fund, shall be applied exclusively to the support of primary and grammar schools. I see by reference to the Constitution of California, page 19, Section 6, the amendment offered by the gentleman from Choteau county. He is just in – The amendment offered is identical with Section 6. Of the California Constitution. Now, as has been said by Mr Hedges, there is an act of Congress which provides a grant of 72 sections of land, for the benefit of a state university in Montana, but by examination of the law passed by Congress I see that that is not the case. Congress has granted to Montana 72 sections of land as a basis of a fund ** 426 ** for the support and maintenance of a State University, with the express provision that no part of that fund shall be used for the purpose of the establishment of a state university. That is for the

erection of the buildings and paying the salaries of professors and teachers who may be employed in the university. That act of Congress provides that a certain use shall be made of the proceeds of the sale of the lands, but I think no use shall be made of the proceeds of the sale of the 72 sections of land until they shall have amounted to \$50,000; and further that no part of the proceeds of this fund shall be appointed to the erection of the buildings until the whole fund shall have amounted to \$100,000, after which the funds may be donated to any purpose that the legislature of the Territory may see fit to provide. Now, Mr Chairman, the first section of the report of the committee on education provided that it shall be the duty of the legislature of Montana, to establish and maintain a general, uniform and thorough system of public free and common schools. The ** 427 ** amendment provided that that public school system shall include primary and grammar schools, and such high school, normal schools and technical schools as the legislature or district or municipal authority may establish. Now, sir, it seems to me that it would be better to leave the matter of what schools and what system shall be adopted in Montana, to the discretion of the legislature when it comes to act on the subject. It seems to me, sir, that it is not wise at this time to insert a mandatory provision in the Constitution, compelling the legislature when it shall have assembled under the state government of Montana to provide a system of education which shall include not only the common schools, which are authorized by the first section of the report of the committee on education, as well as high schools, normal schools, and technical schools. It seems to me this is a matter which should be left to the legislature very properly, without any mention being made of it in the Constitution. The rule in reference to the power ** 428 ** the state legislature is that it has power to do any and all things where it is not prohibited by the constitution or the laws of the United States. So that if that is the case I can see no necessity of including in this Constitution a command to the legislature to do a thing which it will have the power to do already. And it seems to me in all matters of that kind where the powers sought to be incorporated in the Constitution are not strictly and properly fundamental, that they should be left out to be determined by the legislation until the exigencies which require action shall arise. It seems to me everything of this character, which we put into the Constitution may justly furnish some matter which might arise in the mind of the voters of the Territory as a reason why they should vote against the Constitution. I think in framing this Constitution we should confine ourselves to those things which are purely and strictly fundamental.

Mr McCormick –

Mr Chairman, I have an amendment to offer. ** 429 **

Chairman –

Strike out the words “State school tax” in substitute offered by Mr Collins.

Mr Hedges –

I move its adoption

Seconded and carried

Chairman –

The question is now on the substitute.

Mr Pemberton –

(Insert Pems Speech) ** 430 **

Mr Pemberton –

Mr President, I do not see that any more important question will come before the Convention than that of providing for a good common school system. It is a question which, in my opinion, has more to do with the future welfare of the county than any other question brought before the convention. In my opinion, sir, every dollar which the public shall expend in the education of the rising generation which shall come afterward, will be a dollar saved which would otherwise have to be expended in the building of jails and penitentiaries. I believe the best way to provide for the suppression of crime is for the County to provide for the general diffusion of knowledge. As far as the history of crime shows it is beyond all question that criminals come from the uneducated and unenlightened classes. If we would suppress crime we must educate the people. We must build up institutions of learning.

I don't believe the system ** 431 ** which establishes common schools, grammar schools, primary schools or by whatever name they may be called – meets the public demand of the hour. I believe there should be a higher system of education than can be formed today in the common primary schools of our land. I believe the law somewhere right to provide for a system of high schools and normal schools. No school system in the state of Montana – when it becomes a state – could be considered complete and sufficient to the demands of the day that leaves out high and normal schools. There is no provision in this report for any such system. Where are your children to be educated? Where will you find the kind of schools that will prepare your children for admission into the university? They must necessarily seek it in private schools or else the people of the Territory or of this state must send their ** 432 ** children away to foreign lands to be educated. Such a system as that should be deplored by the parents. If you want your sons and daughters to love Montana and to respect and reverence these sun kissed valleys and these enchanted mountains educate them at home. I tell you, sir, whether the boy may wander in this world, or under whatever skies he makes his house, his heart will turn back with fondness to his Alma Mater. He cannot forget it. Fit your boys for a useful life at home and ensure them good common useful training in Montana. Now, sir, I am in favor of a good liberal, broad gauge system of public education. I want it to include the high school and the normal school. I want the public school system to provide for normal schools where teacher can be prepared to teach our own children and teach them to love Montana and Montana ** 433 ** institutions. Now, sir, if we have high and normal schools, and the legislature is prohibited from providing a tax, how are we going to support them? The legislature may either

provide by a special tax for the support of these schools or provide for the people voting such a tax upon themselves. As a matter of course you do not want to have a normal school for every district in the state. When I speak of district, I do not have reference to "school district," as we understand the word. But normal school districts include counties in certain portions of the state. For instance, in a number of the states we have three or four normal schools, and each one of these normal schools is located in a district that is established by the legislature. But, gentlemen, if you want to provide now for a liberal broad gauge system of public education, in my opinion the resolution offered by the gentleman ** 434 ** from Choteau (Mr Collins) should be adopted with the amendment offered by the gentleman from Missoula (Mr McCormick). I am not willing to stop here with a public school system which simply gives us a primary school. We want more. There is no danger that we will overdo the thing in providing for education. It is in the interest of good government – it is in the interest of morality and virtue – it is the proper movement for the suppression of crime, and in the highest, most sacred and holy way that can address itself to the human conscience; and I appeal to the convention today to let no parsimony or narrow mindedness govern them in the adoption of a common school system for the State of Montana. (Applause) ** 435 **

Substitute adopted –

Chairman –

(reads)

Section 9. Neither the Legislature nor any county, city, town or school district or other public corporation shall ever make, directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college or university, or other literary or scientific institution, controlled in whole or part by any church, sect or denomination whatever.

Mr Burleigh –

I offer an amendment.

Chairman –

Amend Section 9 by inserting on line 3 after the word "whatever" the words, "or make any grant of lands or other property" and strike out the word "anything" in same line

Mr Pemberton –

I move its adoption.

Seconded and carried

Mr Smith –

I move the adoption of the section

Seconded and carried

Chairman –

(reads)

Section 10. No religious test or qualification shall ever be required of any person as a condition of admission into any public education institution of the State, either as teacher or student, nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public education institute of the State.

Mr Pemberton –

I offer an amendment I think that word “a” is in the wrong ** 436 ** place

Mr Eaton –

Take it out

Laughter

Mr Pemberton –

I’ll take it out. But I want the words “or political” after the word “religious”

Chairman –

Amend Section 10. By inserting after the word “religious” on line 1, the words “or political”

Mr Pemberton –

I move its adoption

Mr Hedges –

I would ask the gentleman if the word “partisan” would not be better than “political”?

Mr Pemberton –

If the gentleman prefers the word partisan I have no objections. I mean that you cant keep a man out of these institutions on account of his politics.

Mr Callaway –

I hope the democrats will be kept out

Laughter

Mr Pemberton –

I move the adoption of the amendment

Seconded and carried

Mr Burleigh –

I have an amendment

Chairman –

Amend Section 10. By adding thereto the following, “Nor shall any ** 437 ** person be debarred admission to any of the collegiate departments of the University on account of sex.”

Mr Waterbury –

I move its adoption

Seconded and carried

Mr Hedges –

I would like that word “institute” in the last line changed to “institution”

Mr Pemberton –

I move the chairman of the committee be instructed to make that change

Seconded and carried

Mr Waterbury –

I move the adoption of the section as amended

Seconded and carried.

Chairman –

(reads)

Section 11. The election of all school officers, including Regents of the University, but not including school district officers, shall so far as possible, be provided for on alternate years from those on which occur the election of members of the Legislature, members of Congress, and other civil officers usually denominated political.

Mr Collins –

Mr Chairman, I offer a substitute.

Chairman –

The gentleman from Choteau, Mr Collins offers the following substitute

“Section 11. The legislative assembly may provide for the election of all school officers, including Regents of the University, at separate elections from ** 438 ** those at which other state or county officers are voted for

Mr Collins –

I move its adoption

Mr Dixon –

Second the motion

Mr Eaton –

I have an amendment

Chairman –

The gentleman from Gallatin Mr Eaton offers the following. Amend Section 11. By striking out in line 2, the words “alternate years from” and substitute therefor the words “same years as”

Mr Clark –

My conviction is that the amendment offered by the gentleman from Gallatin is out of order.

Chairman –

The question is on the motion to strike out Section 11 and insert the substitute

Mr Proctor –

I call for a division of the question

Chairman –

The question is on the motion to strike out Section 11

Carried

Chairman –

The question is on the adoption of the substitute

Carried by a viva voce vote of 16 ayes and 9 noes.

Chairman –

(reads) ** 439 **

Section 12. At the first general election provided therefor there shall be chosen by the qualified electors of the State, four regents of the university who shall at their first meeting be so classified by lot that two shall hold office for two years and two for four years, and every two years thereafter there shall be elected two regents whose term of office shall be four years. The regents so elected and their successors shall constitute a body corporate to be known by the name and style of "The Regents of the University of Montana." Such regents shall receive no salary, but shall be allowed all actual and necessary expenses incurred in the discharge of their official duties.

Mr Burleigh –

I offer a substitute

Chairman –

The gentleman from the first district offers the following:

"Substitute for Section 12.

'Section 12. At the first general election provided therefor, there shall be chosen by the qualified electors of the state, six regents of the University who shall be so classified by lot that two shall hold office 2 years, two for four years and two for six years. And every two years thereafter there shall be elected two regents whose term of office shall be six years. The regents so elected and their successors shall constitute a body corporate to be known by the name and style of the regents of the University of Montana. Such regents shall receive no salary but shall be ** 440 ** allowed all actual and necessary expense incurred in the discharge of their official duties."

Mr Waterbury –

I move its adoption.

Seconded and lost by a viva voce vote of 9 ayes to 12 noes.

Mr Clark –

I move the adoption of the Section

Mr Proctor –

I have an amendment to make the section conform to what we have been doing all the way through. That is to insert after the word "years" on 4th line, the words "except as otherwise provided in this Constitution.

Mr Hunt –

I move the hair be instructed to insert that

Seconded and carried

Mr Merriman –

I move the adoption of the section as amended

Seconded and carried

Chairman –

(reads)

Section 13. The regents of the university shall, as soon as practicable and they may deem necessary, choose a president of the university, who shall hold his office until removed for cause by the board of regents; he shall be *ex officio* a member of the board with the privilege of speaking, but not voting, except in case of a tie; he shall preside at the meetings of the board and be principal executive officer of the university, and a member of the faculty thereof. ** 441
**

Mr Clark –

Mr Chairman, I offer an amendment

Chairman –

The gentleman from Silver Bow, Mr Clark, offers the following

Amend Section 13. By striking out the words “until removed for cause by the board of regents,” on line 2. And inset the word, “for the term of 4 years unless before that time he be removed for cause.”

Mr Clark –

I move its adoption

Seconded.

Mr Clark –

I have but a word to say in support of the amendment. I am opposed to giving these men a life long lease of office and the question that they may be removed for cause, will be a very difficult question to determine. The board of regents might find cause to remove a good man without any actual cause and a person might be retained who should be removed. It is a very difficult question at any rate to put upon the board of regents. I think it would best subserve the interests of all to have the office elective every four years

Amendment carried

Mr Burleigh –

I move the adoption of the ** 442 ** section as amended.

Seconded and carried.

Chairman –

(reads)

Section 14. The board of regents shall have the general supervision of the university, and the exclusive control, direction and disposition of the lands and moneys granted to the State for university purposes by the general government, and of all grants, gifts, devises and bequests or appropriations from the general government, the State, or from any other source whatever, for the exclusive use and benefit of the University of Montana; and said board shall further provide for the safe and profitable investments of all funds, derived from whatever source, intended for the permanent endowment of said university, under such regulations as may be prescribed by the Legislature of the State, the latter being guarantee against the loss or diversion of any part thereof.

Mr Dixon –

I have an amendment to that

Chairman –

The gentleman from Silver Bow Mr Dixon, offers the following:

Amend Section 14. By inserting after the words “shall have” on line one, the words “under such regulations and restrictions as may be prescribed by law”

Mr McCormick –

I move its adoption.

Seconded and carried.

Chairman –

The gentleman also offers to amend by striking out the word “exclusive” on lines and 2. The word ** 443 ** is divided

Mr Callaway –

I move its adoption

Seconded and carried

Chairman –

Mr Dixon also offers to amend by inserting after the word “regulations” on line 7, the words “and restrictions.”

Mr Medhurst –

I move its adoption

Seconded and carried.

Mr Pemberton –

I have an amendment

Mr Clark –

“ “ “ “

Mr Smith –

“ “ “ “

Chairman –

The gentleman from Silver Bow, Mr Pemberton offers the following amendment to Section 14:

Amend Section 14, by adding after the word “government” in line 3. The words “not inconsistent with the terms of the grant from the government”

Mr. McSorley –

I move its adoption

Seconded and carried.

Mr Proctor –

I was about to suggest the words “not inconsistent with such grant.”

Mr Hedges –

I would like to amend as to that word “latter” in line 8.

Mr Langhorne –

I have sent up that amendment ** 444 **

Mr Clark –

I would like to ask the chair if he received an amendment from me, which modifies –

Chairman –

I am picking up the amendment in the order in which they were handed to the chair. I have two amendments here which are not signed and I do not know whom they are from – Mr Langhorne offers the following:

“I move to strike out in line 8, the word “latter” and insert in lieu thereof the word “state”

Mr Hedges –

I move its adoption

Seconded and carried

Chairman –

Mr Dixon offers the following:

Amend Section 14. By striking out the following words in lines 7 and 8, “the latter being guarantee against the loss or diversion of any part thereof”

Mr Hunt –

I move its adoption

Seconded and lost.

Chairman –

Some gentleman offers the following:

Insert after the word “legislature” the words “the same being guaranteed against loss or diversion,” and strike out the last clause beginning with ** 445 ** the word “the in line 8

Mr Smith –

Line 7.

Mr Clark –

I would like to call the attention of the chair to the amendment I sent up

Chairman –

It is marked No 6. And there are still amendments ahead of it. The committee is considering the amendment of the gentleman from Beaverhead.

Mr Waterbury –

I move its adoption.

Mr McCormick –

I believe it is already stricken out.

Mr Hedges –

There has been no vote on it yet

Mr Callaway –

Will the chair please read it again

Chairman –

If the committee understands it, it is more than I do. "Insert after the word "legislature" in line 7. the words "the same being guaranteed against loss or diversion," and strike out the last clause, beginning with the word "the" on line 7."

Amendment lost.

Chairman –

The next amendment is 'Substitute the word "state" for the word "latter" – That has already been done.

Mr McCormick –

That was Mr Langhorne's ** 446 ** amendment.

Chairman –

Mr Clark offers the following:

Amend Section 14 by adding after the word "government" in line 3, the words, "under such regulations and restrictions as may be prescribed by law"

Mr Dixon –

The amendment I offered and which was adopted covers that question

Mr Clark –

I was laboring under the impression that the amendment was lost. I withdraw the amendment.

Chairman –

Mr Green offers the following:

Amend Section 14. By striking out the words “the legislature of the state” in line 7. and insert in lieu thereof the word “law”

Mr Callaway –

I move its adoption

Seconded and carried

Mr Proctor –

I move the adoption of the section as amended.

Seconded.

Mr Burleigh –

Before the section is adopted I would like to hear it read as amended. ** 447 **

Mr Clark –

I suggest that the chair be given time to properly arrange the amendments

Mr Langhorne –

I move the committee take a recess for five minutes.

Mr McCormick –

The committee have just adopted an amendment to strike out the words “the legislature”, now it seems to me the words “of the state” should be stricken out.

Mr Green –

They are stricken out.

Chairman –

(reads section as amended)

The question is on the adoption of the section.

Carried

Mr Clark –

I move general file No 4. Be adopted as amended

Seconded and carried

Mr McCormick –

Mr Chairman, I move you now, sir, that the committee rise and instruct the chairman to report general file No 4. Back to the convention with the amendments and recommend that as amended by the Committee of the whole it be adopted.

Seconded and carried

Four oclock p.m.

Convention called to order.

President Clark in the chair

Mr Toole –

Mr President, as chairman of the ** 448 ** committee of the whole I am instructed to report to the convention but I desire until Monday morning to prepare my report.

The President –

If there is no objection the Chairman may have until Monday morning to prepare his report.

Mr Burleigh –

Mr President, I move the convention go into a committee of the whole for the consideration of general file No 5.

Seconded and carried

The President –

Will Mr McCormick please take the chair. ** 449 **

Chairman –

The committee will come to order.

Mr Toole –

Mr Chairman, I move the committee do now rise report progress and ask leave to sit again

Seconded –

Voices –

No. No.

Chairman –

Gentleman you have heard the question – question put – The motion is carried

Voices –

Division – Division

Chairman –

The result is 15 ayes and 15 noes. The chair votes aye and the motion is carried. The President will take the chair.

Convention called to order at 4:10 p.m.

President Clark in the chair

Mr Power –

Mr President, I move we adjourn

Seconded

Mr Burleigh –

Ayes and noes

Mr Van Gasken –

I move to amend by making it 7 oclock this evening

The President –

The motion was simply to adjourn and if we adjourn on that motion it must be ** 450 ** until 10 oclock Monday Morning unless amended.

The roll call resulted as follows:

Constitutional Convention

	Aye.	No.
Abascal	/	
Burleigh		/
Browne		
Collins		/
Carroll	/	
Callaway	/	

Catlin	/
Cooper	/
Dixon	/
Daly	
Douglass	/
Eaton	/
Eddy	/
Ferris	
Fergus	/
Green	/
Hunt	/
Hedges	/
Howell	
Haase	
Hundley	/
Langhorn	/
Medhurst	/
McCormick	/
McSorley	/
Merriman	/
Mills	
Maloney	
McClintock	/
Napton	
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	/
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	
Van Gasken	/
Waterbury	/
Mr. President	/

The President –

The result is 16 ayes and 17 noes. I declare the motion lost. ** 451 **

Mr Burleigh –

Mr President, I move you the convention do now resolve itself into the committee of the whole for the consideration of general file No 5.

Seconded and carried.

Mr Pemberton –

Mr President, I move the convention adjourn until ten o'clock Monday morning

Seconded

Mr Burleigh –

Mr President, wasn't there 17 votes cast in the negative

The President –

Yes sir

Mr Burleigh –

Then the motion to adjourn is out of order

The President –

No sir. There has been intervening business. The motion to adjourn is in order.

Mr Burleigh –

Then I call for the ayes and noes.

Mr Burleigh –

Then I call for the ayes and noes.

Mr Langhorne –

Did the President decide that the motion to adjourn is in order? The convention decided to go into the committee of the whole

The President –

The motion was carried but no chairman has yet been appointed by the chair. ** 452 **

Mr Burleigh –

The point of order this is –

The President –

The motion to adjourn is in order.

Secretary call the roll

Roll call resulted as follows.

	Aye.	No.
Abascal	/	
Burleigh		/
Browne		
Collins		/
Carroll	/	
Callaway	/	
Catlin		/
Cooper		/
Dixon		/
Daly		
Douglass		/
Eaton	/	
Eddy	/	
Ferris		
Fergus		/
Green	/	
Hunt		/
Hedges	/	
Howell		
Haase		
Hundley	/	
Langhorn		/
Medhurst		/
McCormick	/	
McSorley	/	
Merriman	/	
Mills		
Maloney		
McClintock		/
Napton		
Pease		/
Pemberton	/	

Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	
Steel		
Stephens	/	
Toole	/	
Thornton		
Vivion		
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 453 **

Mr Langhorne –

As I see the disposition of the convention is to adjourn I change my vote to aye –

Mr Pemberton –

Second the motion.

Mr Cooper –

Mr President, I don't know as I am entitled to say anything on the subject, but the first thing this convention knows it will wake up some Monday morning without a quorum here. We haven't got any time to throw away. I say right now unless there is more of a disposition to go ahead with the work on hand. I shall for one, see if I can get up a combination to break the quorum

Mr Power –

This is a bad time to commence on a new file, Saturday evening at half past four oclock. We had better adjourn, I think, and commence fresh on Monday morning

The President –

Gentlemen, the subject is not debatable.

The President –

The result of the vote is ** 454 ** as follows, ayes 18, noes 15. The motion is carried, and I declare the convention adjourned until 10 oclock Monday morning. ** 455 **³⁰ ** 456 **

³⁰ This page is the image of a folder labeled Proceedings. 15th day, Jan. 28, 1884.

Fifteenth Day
January, 28th, 1884 –
Morning Session

Convention called to order at ten oclock

President Clark in the Chair

Roll call. Quorum present as follows:

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne		
Collins		/
Carroll		/
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass	/	
Eaton	/	
Eddy		
Ferris		
Fergus	/	
Green	/	
Hunt	/	
Hedges	/	
Howell		/
Haase		
Hundley	/	
Langhorn	/	
Medhurst		/
McCormick	/	
McSorley	/	
Merriman	/	
Mills		
Maloney		
McClintock	/	
Napton		
Pease		
Pemberton	/	
Proctor	/	

Powers	/	
Robinson		
Smith	/	
Savage	/	
Steell		
Stephens	/	
Toole	/	
Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 457 **

Mr McCormick –

Mr President, I understand Mr Napton of Silver Bow is very much indisposed and has made a request to be excused from further attendance as a member of this convention. I move that he be excused

Seconded

The President –

I have received a letter from Mr Napton and he is compelled to leave for the south, immediately, on account of his health.

Motion carried

The President –

Mr Napton is excused from further attendance on the Convention

Journal of yesterday read and approved

Mr Toole –

Mr President, before taking up the general order, I desire to make the report of the committee of the whole on general file No 4 –

The Secretary –

“Mr President, The committee of the whole to whom was referred general file No 5 – have had the same under consideration and having adopted the said file as printed with the several amendments hereinafter noted have directed me to report the same ** 458 ** back to the Convention with the recommendation that said file be adopted as amended

1st Amend Section 4. by inserting after word, "regulations" on line 3, the following words "and restrictions."

2d Amend Section 7. by striking out all of Section 7. after the word "years" on line 2.

3d Strike out Section 8.

4th The following section was adopted in lieu of Section 8. as printed :

"Section 8. The public school system shall include primary and grammar schools and such high schools, normal schools and technical schools, as may be established by the legislature, or any municipal or district authority, but the entire revenue derived from the state school fund shall be applied exclusively to the support of primary and grammar schools."

5th Amend Section 9 by inserting after the word "whatever" in line 4. of said section, the following "or make any grant of lands or other property."

6th Also amend Section 9 by striking out the words "anything" in said line 4, of Section 9

7th Section 10. was amended by inserting after the word "religious" on line 1. the following, "or partisan."

8th Section 10 was also amended by striking out the word "institution", on line 4 ** 459 ** and inserting in lieu thereof the word "institution"

9th Section 10. was further amended by adding to section 10 as amended the following, "Nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex."

10th Section 11 was stricken out and in lieu thereof the following Section was adopted
"Section 11 the legislature may provide for the election of all school officers including regents of the University in separate elections from those at which other state or county officers are voted for."

11th Section 12. was amended by inserting after the word "years" in line 4. the following "Except as otherwise provided in this constitution."

12th Section 13 was amended by striking out in lines 2 and 3 the words "until removed for cause by the board of regents" and insert in lieu thereof the words, "for the term of four years unless before that time he be removed for cause."

13th Section 14. was amended by inserting after the words "shall have" in line 1 the words "under such regulations and restrictions as may be prescribed by ** 460 ** law," and also amended by striking out the word "Exclusive" on lines one and two and inserting after the word "regulations" on line 7. the words "and restrictions."

Section 14 was further amended by adding after the words "government" in the 3d line of said section, the following, "not inconsistent with the terms of the grant from the government." And also by striking out in line 8 the word, "latter" and inserting the word "state."

Said section was further amended by striking out on line 7 the words "the legislature of the State and inserting the word "law, so that as amended the section as adopted would read as follows:

Section 14. The board of regents shall have, under such regulations and restrictions as may be prescribed by law, the ground supervision of the university and the control, direction and disposition of the lands and moneys granted to the state for university purposes by the general government not inconsistent with the terms of the grant from the government and of all grants, gifts, devises and bequests or appropriations from the general government, the state, or from any other source whatever for the exclusive use and benefit of the university of Montana and said board ** 461 ** shall further provide for the safe and profitable investments of all funds derived from whatever source, intended for the permanent endowment of said university under such regulations and restrictions as may be prescribed by law, the state being guaranteed against loss or diversion of any part thereof.

Respectfully submitted

J.K. Toole

Chairman of Committee of the whole

The President –

What is the pleasure of the convention

Mr Proctor –

Mr President, I move the report of the committee of the whole be adopted

Seconded

Mr Pemberton –

Mr President, I offer an amendment for Section 14. line 3, after the words "not inconsistent with the terms of the grant from the government." I want to amend that by striking out the 3 last words. It means the same thing without it.

The President –

Will the gentleman put this amendment in writing

Mr Pemberton –

Yes sir. ** 462 **

Mr Toole –

I second the amendment

The Secretary –

“Amend Section 14. On line three by striking out the words “from the government Pemberton”

Carried –

Mr Burleigh –

Mr President, I have an amendment.

The Secretary –

“Move to amend Section 12 by substitution the following:

Section 12. At the first general election provided therefor, there shall be chosen by the electors of the state, nine regents of the university, who shall at their first meeting be so classified by lot that three shall hold office for two years, three for four years and three for six years, and every two years thereafter there shall be elected three regents whose term of office shall be six years, except as otherwise provided in this constitution. The regents so elected and their successors shall constitute a body corporate to be known by the name and style of “the regents of the University of Montana” Such regents shall receive no salary but shall be allowed all actual and necessary expenses incurred ** 463 ** in the discharge of their official duties

Burleigh”

Mr Burleigh –

Mr President, I would like to make a correction in the amendment if I may be permitted to withdraw it for a moment

Mr Callaway –

Mr President, I have an amendment

The Secretary –

“Amend Section 1 line 1, by striking out the words “believing that” and insert the word “that”. Also line 2 strike out the words “that” on line 3. and insert the word “their” and the word “therefor”

Callaway”

Mr Callaway –

Move its adoption

Mr Toole –

I would like to hear the section read as amended

Mr Callaway –

I will read it

Mr Hedges –

Wouldn't it be better to insert the word "whereas"

Mr Callaway –

In place of the words, "believe that insert the word "whereas"? Very well. ** 464 **

Mr McCormick –

Mr President, I believe there is a question before the convention and should be acted upon, on the motion of the gentleman from Silber Bow to adopt the report of the chairman of the committee as amended.

The President –

I believe that the gentleman from Missoula is correct

Mr Proctor –

Mr President, I made the motion to adopt the report as amended in the committee of the whole, and the gentleman from Silver Bow offered to amend, which was in order and an amendment to that amendment would be in order. I understand that the amendment offered by the gentleman from Silver Bow, is in order.

The President –

The question is on the adoption of the report of the committee

Mr Proctor –

Before the report of the committee of the whole is adopted, it is certainly subject to amendment

The President –

After the report has been adopted ** 465 **

Mr Proctor –

I don't so consider it. It is subject to amendment of course before it comes up for final reading and the proper time to offer amendments is before the report is adopted.

The President –

The chair decides that the question is on the adoption of the report of the committee of the whole.

Carried

The President –

The report of the chairman of the committee of the whole on general file No 4. Is adopted. The amendment offered by Mr Callaway is now in order.

Mr Callaway –

I will withdraw that for the present.

The President –

Then the question is on the amendment offered by Mr Burleigh

Amendment read by the Secretary

Mr Burleigh –

Mr President I move the adoption of the amendment.

Mr McCormick –

Second the motion

Mr Burleigh –

Mr President, on Saturday last when the subject was up in committee of ** 466 ** the whole, I offered a substitute to the report of the committee on education providing for six regents of the university instead of four. The committee however did not concur with me in that, and voted it down. Upon further reflection I am still of the opinion that the members of regents is too small to have in charge so important an institution of the state as the state university. Having as they do almost the absolute control and disposition of the property of the institution and the direction of its affairs I am of the opinion also, from what information I can get, that there is no institution in the country that will occupy so important a position as university of Montana. I think in the state university of Iowa they have ten or twelve regents, and in the State university of Michigan I understand they have ten, and I think they have similar numbers in all universities, and it seems to me in Montana we should provide a number of regents sufficiently large so that it cant be controlled by individual influences, and so that the best educational syndicates of the

state can be put on the board, in order that the highest institution of learning in the state may have the benefit. I further believe that in the course of **467 ** a very few years the university of Montana will be a concern of considerable wealth and the object of the university is to attract wealth for the purpose of education, from the philanthropically inclined, to dispose of the wealth while living or when they die, to the greatest degree to benefit the youth of the state. I increase the number to 4 from 6 at the suggestion of my friend from Missoula county, Mr McCormick, and I entirely concur with him in the view that 4 is not too large a board, and I only put it six before because the disposition of the convention is to retain a board as small as possible. I hope the substitute will prevail.

Mr Callaway –

I offer an amendment to the substitute

The Secretary –

“Amend Section 12 by adding, “The Board of regents of the university of Montana may be increased by the Legislative Assembly to any number not exceeding ten

Callaway”

Mr Callaway –

I move its adoption. ** 468 **

Seconded and carried.

The President –

The amendment is adopted and the question recurs to the original motion

Mr Hedges –

I don't think the gentlemen fully understand the shape of the amendment

Mr Pemberton –

Mr President, as I understand it the amendment of the gentleman from Madison as added to the section as it now stands will render the substitute of the gentleman from the first district unnecessary. The substitute takes the place of the section except that it provides for 9 regents. The amendment of the gentleman from Madison if added to the section as it now stand simply gives the legislature the authority to increase the regents to a number not exceeding ten. Therefore it would render the substitute of the gentleman from the first district useless, as the amendment to the original section is substantially the same.

The President –

The chair erred in treating the substitute as an amendment to ** 469 ** an amendment. The question is now on the substitute of the gentleman from the first district

Mr McCormick –

I understand the amendment of the gentleman from Madison is an amendment to the substitute of the gentleman from the first district

Mr Pemberton –

It cant be.

Mr Proctor –

It is a substitute for the amendment.

Mr McCormick –

The gentleman from Madison amends by giving the legislature power to increase the number of regents from 9 to ten

Mr Pemberton –

No sir, from six to ten

Mr Callaway –

I think I was at fault myself. My idea was to fix the number at six, but my proposition was that the board of regents of the University of Montana may be increased by the legislature to the number of ten when necessary

The President –

The proposition offered by the gentleman from the first district is the question before the convention. ** 470 **

Motion carried by a vote of 16 ayes and 15 noes.

The President –

The motion to adopt the substitute is carried.

Mr Callaway –

Now, sir I offer that amendment

The President –

Does the gentleman now desire the substitute read

Mr Callaway –

I would like to have the amendment with the substitute read and see what it means

Laughter.

The Secretary –

“Amend Section 12 as follows :

The board of regents of the University of Montana shall be increased by the legislative assembly to any number not exceeding ten.

Mr Vivion –

I would like to have the substitute read.

Mr McCormick –

Why don't the gentleman from Madison arrange his amendment to conform with the amendment adopted

Mr Pemberton –

The gentleman from Madison insists that the legislature may increase ** 471 ** the number from 9 to 10.

Mr Callaway –

Mr President, I withdraw my amendment.

The President –

The amendment of the gentleman from Madison is withdrawn

The Secretary –

“Amend Section one, by striking out in line 1, the words “believe that” and insert in lieu thereof the word “whereas”

Callaway.”

Mr Toole –

I move its adoption

Mr Smith –

I have a substitute for the amendment

The President –

The question is on the amendment of the gentleman from Madison

Mr Burleigh –

I understood that the gentleman withdrew his amendment.

Mr Callaway –

I did. This is another one.

Mr Burleigh –

I would like to hear it read as offered.

Mr Callaway –

Strike out in Section 1, line 1 the words “believe that,” and insert in ** 472 ** lieu thereof the word “whereas”

Mr Toole –

Mr President, an amendment.

The Secretary –

“Amend Section 1. By striking out all that portion of Section 1. Preceding the word “it” line 3
Toole”

Mr Toole –

I move the adoption of the amendment

Seconded

Mr Callaway –

Mr President, I am opposed to striking that out. I conceive sir, the intention and purpose of the convention will be as well served by striking it out as by leaving it in. But the proposition laid down here is a fundamental principal and can be as correctly stated here as the preamble. Here, sir, is the assertion of a principle of government and I desire to see it in the constitution. I want the boys to see it and learn it. The only objection I have is that state by the eminent gentleman known for his literary attainment, an assertion we know to be true. He says the form of government depends greatly on the diffusion of knowledge ** 473 **

Mr McCormick –

I would like to ask the gentleman a question. To the gentleman from Madison in favor of the Chinese voting?

Mr Callaway –

I am in favor of every man voting who has a right to. I am in favor of universal suffrage. Every man who is an American citizen, whether he be from such or is such by adoption under the nationalization laws. I believe he's a right to vote

Mr Pemberton –

How about the Chinese

Mr McCormick –

Com to the point

Voices –

Put him on record – Why don't he answer the question.

Mr Callaway –

No gentleman can get into the constitution a principal providing for universal suffrage too quick to suit me. No gentleman can go further than I in considering that principle, or in providing that class of people who don't understand our principles. As to whether I am in favor of Chinese suffrage and Chinese immigration, No Sir ** 474 **

Mr Pemberton –

Correct.

Mr Callaway –

Now I ask this convention to return in this Constitution the proposition here. When we go down to the halls of Congress, perhaps a committee may be sent there by convention for the purpose of laying before the two houses and the President of the United States this constitution we may adopt here. When we go there- I take some pride in this matter, and I have taken some part in getting this Constitution together – I want to see this people come with a constitution that the boys in the country, may read that the old men who are silvery with years can point with pride to the constitution provided by the people of Montana as the best in the land. We have before us the constitution of all states and we can improve upon them if we are wise enough. But I admire the sentiment that the committee on education has incorporated in the first section and I will reiterate again, I want the boys and girls in the land to read that proposition day by day and they can never forget it, and I want it incorporated in the fundamental laws of Montana. ** 475 **

Mr Toole –

Mr President, this section is entirely complete without the proposition to strike out. It seems to me the only place for introductory remarks or anything in the nature of a preamble is at the very commencement of the constitution. The committee was appointed for the purpose of placing it where it is usually placed in the Constitution and it is wholly unnecessary that it should be inserted in this article, any more than that it should go into every article that precedes this. And for that reason I move to strike it out. There is one comprehensive proposition in this and that is universal suffrage which includes men women and children but it will be time enough to consider that when it comes up in its proper place. By striking this out it leaves the section complete, and instructs the legislature what to do

Mr Hedges –

I do not like to be officious in this matter, but I would like to see the section stand as it is. I think it more than useless verbiage to make the amendment. I find the same thing in the constitution of all states as it is here. As far as adding a few hours to this Convention ** 476 ** cannot be compared to the utility of assuming in it a principle which I believe is felt by nine tenths or ninety-nine one-hundredths of the people of Montana. I hope it will not be stricken out.

Motion put and carried

The President –

Here is an amendment by the gentleman from Beaverhead on the same subject

Mr Smith –

Yes sir the same thing and I withdrew it

Mr Hunt –

Mr President, I will take this opportunity to say that in considering this matter in committee of the whole I offered an amendment to section seven, which struck out all of the word “years” and which removes the compulsory clause in this file. I wish to state that I am heartily in accord with the learned gentleman who has been the chairman of the committee of the whole, and I am in favor of it. I don’t think it is necessary to adopt it as a fundamental principle, because I don’t believe the people are ready to receive it. I believe it is 20 years ahead of the ** 477 ** time, and that was my motive in presenting the amendment. I would like to go on the record and not be misapprehended in my motive for offering it

Mr McCormick –

Mr President, I move you general file No 4. Be adopted as amended and referred to the Committee on engrossment

Seconded and carried

Mr Douglass –

Mr President I move sir the convention now go into Committee of the whole for the consideration of general file No 5.

Seconded and Carried

The President –

Mr McCormick will please take the chair. ** 478 **

Chairman –

The committee will come to order. The file will be read by Sections. General file No 5, Article on Corporations

Section 1. All existing characters or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

Mr Waterbury – I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 2. No charter of incorporations shall be granted, extended, changed or amended by special law, except for such municipal, charitable, education, penal or reformatory corporations as are or may be under the control of the State; but the General Assembly shall provide, by general laws, for the organization of corporations hereafter to be created.

Mr Dixon –

I desire to offer an amendment.

Chairman –

At end of section 2, add, "Provided that all such laws shall be subject to future repeal or alteration by the Legislative Assembly."

Callaway – Toole – Pemberton –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 3. The Genral [sic] assembly shall have the power to alter, revoke or annnl [sic] any charter of incorporation now existing and revocable at the adoption of this constitution, or any that may hereafter be created, whenever in their opinion it may be injurious to the citizens of the State, in such manner however, that no injustice shall be done to the corporators. ** 479 **

Mr Douglass –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 4. The General Assembly shall provide by law that in all elections for directors or managers of incorporated companies. Every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are director or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. And such directors or managers shall not be elected in any other manner.

Mr Cooper –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 5. All railroads shall be public highways, and all railroad companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to constitute and operate a railroad between any designated points within this State, and to connect at the State line with railroads States and Territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

Mr Dixon –

I have an amendment to the section. ** 480 **

Chairman –

Amend Section 5 by inserting after the word "railroad" and before the word "companies" in line 1, the words "transportation and express"

Mr Toole –

I move its adoption.

Seconded and carried

Chairman –

Also amend Section 5 by adding after the words common carriers line 2, the words, "and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law, the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the State"

Mr Callaway –

I move its adoption

Seconded and carried

Mr Howell –

I have an amendment.

Chairman –

"I move to amend section 5 by striking out in line one the words "all railroads shall be public highways."

Mr Howell –

I move its adoption

Seconded –

Mr Howell –

I don't see the meaning of the words. I was a member of ** 481 ** the committee, but my attention was not called to the words at the time it was considered. I don't see how a railroad is a public highway. A railroad has a right of way and they put down on that right of way, the ties and rails, and they own it, but it is not a public highway. No other railroad company could use their track. If anybody will show me how a railroad company is a public highway I will withdraw my amendment.

Mr Pemberton –

In answer to the gentleman I will say, that all railroads are public highways. That is a matter wholly established by the judiciary of the country

Mr Dixon –

It appears to me it would not be well to strike out that provision. It might limit the power of the legislature over roads to a considerable extent. The right of the public to provide for public highways is greater than the power they have over mere ** 482 ** private ways. And this provision is to declare all railroads public highways. A railroad company may have a greater or less right in the use of a highway, but of the roads are declared public highways by law it certainly gives the legislature more power over them. Railroads are declared to be public highways by a general provision throughout all our law, and I think it is a very good provision, and gives the public the right to travel over them as such

Mr Howell –

I withdraw my amendment

Mr Pemberton –

I offer an amendment.

Chairman –

Strike out the word “Constitute” inline 2, and insert instead the word “Construct”

Mr Toole –

I move its adoption

Seconded and carried.

Chairman –

If there are no more amendments the section will be considered adoption. The section ** 483 ** is adopted as amended.

(reads)

Section 6. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

Mr Callaway –

I offer an amendment

Chairman –

The gentleman from Madison offers the following:

Amend Section 6 by adding after the word "corporation" in line 1, the words "or telegraph company," also insert the same words in line 2 after the words "or telegraph company."

Mr Pemberton –

That provision is made in another clause

Mr Callaway –

Then I withdraw the amendment

Mr Toole –

I have an amendment.

Mr Cooper –

Mr Chairman, I cant see any force in the section. I don't see how we can prevent a thing of this kind when the railroads are owned by stockholders I don't see why one line cant buy the stock of another, and I should like to know the use of this section. ** 484 **

Chairman –

I call for the chairman of the committee to explain the force and importance of the Section

Mr Pemberton –

In answer to the gentleman I will state, that in nearly all of the states they have adopted constitutions that diminishes the railroad power in the country. It is to prevent railroad companies from purchasing up competing lines and running and monopolizing them. Running them in such a manner as to prevent the public from having the benefit of them. In other words the constitutions of most of the states, assert the doctrine that when railroad corporations undertake to make such purchases or undertake to enter into these kind of contracts for consolidation which are in the interests of monopolists and against the public, that such undertakings shall be absolutely null and void. When one competing line undertakes to purchase another competing line such purchase shall be ultra vires. That is the object and it is a good provision, and I trust the convention will adopt it. ** 485 **

Mr Douglass –

Mr chairman, an amendment

Chairman –

Insert after the word "corporation" in line 1, the words "express or other transportation company."

Mr Douglass –

I move its adoption.

Seconded and carried

Mr Eaton –

Mr Chairman, I offer an amendment

Chairman –

Mr Eaton offers the following

Amend Section 6, by adding, “neither shall it in any manner unite its business or earnings, with the business or earnings of any other railroad corporation.”

Mr Eaton –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 7. All individuals, associations and incorporations shall have equal rights to have persons and property transported over any railroad in this State, and no undue or unreasonable discrimination shall be made in charges or in facilities for transportation of freight or passengers within the State, and no railroad company, nor any lessee, manager or employe [sic] thereof, shall give any preference to individuals, associations or corporations in furnishing cars or motive power.

Mr Dixon –

Mr Chairman, I have an amendment to that. If the chair will allow me I will read it ** 486 ** strike out Section 7 and insert the following:

Sec. 7. All individuals, associations and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this State.

No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad or transportation or express company between persons or places within this State; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons.

No railroad or transportation or express company shall be allowed to charge, collect or receive (under penalties which the Legislative Assembly shall prescribe_ any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this State.

No railroad, express or transportation company, nor any lessee, manager or employe [sic] thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power for transportation.

Mr Eaton –

I move its adoption.

Seconded and carried.

Mr Clark –

I offer an amendment to the substitute.

Chairman –

Amend substitute by adding the words “money or other express matter”.

Mr Clark –

I move its adoption.

Seconded and carried

Mr Pemberton –

I move the adoption of the substitute.

Seconded and carried.

Chairman –

(reads) ** 487 **

Section 8. No railroad or other transportation company in existence at the time of the adoption of this constitution shall have the benefit of any future legislation, without first filing in the office of Secretary of State an acceptance of the provisions of this constitution in binding form.

Mr Van Gasken –

Mr Chairman, I have an amendment.

Chairman –

Amend section 8 line 1, by inserting after the word "railroad" the word "express"

Mr Eaton –

I move its adoption

Seconded and carried.

Chairman –

If there are no other amendments the section will be considered adopted

Chairman –

(reads)

Section 9. The right of eminent domain shall never be abridged nor so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the police powers of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State.

Mr Douglass –

I move its adoption

Seconded and carried

Chairman –

(reads) ** 488 **

Section 10. No corporation shall issue stocks or bonds, except for labor done, services performed, or money and property actually received, and all fictitious increase of stock and indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of General law, nor without the consent of the persons holding a majority of the stock, first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

Mr Vivion –

I move its adoption.

Seconded and carried

[Chairman]

Section 11. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.

Mr Hunt –

Mr Chairman, I have an amendment

Chairman –

The gentleman from Choteau, Mr Hunt, offers the following

Amend Section 11 by adding after the word “served” on line 3, the following:

And no company or corporation formed under the laws of any other country, State or Territory, shall have or be allowed to exercise or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same, or similar character, created under the laws of this State.

Mr Douglass –

I move its adoption.

Seconded and carried ** 489 **

Mr Stephens –

I offer a new section

Chairman –

The gentleman from Missoula offers as a new Section, the following:

“No railroad or other transportation company shall grant free passes, or passage at a discount to any persons except officers and employees [*sic*] of the company.”

Chairman –

Is the amendment seconded

Mr Stephens –

I offer that as a new section to come in between sections 11 and 2. But if nobody will second it I will offer another one.

Chairman –

The gentleman offers the following:

“All railroad corporations within this state shall be required to grant free passes at all times, and to feast on proper occasions the governor and other state officers, and all members of the legislature, and all county officers including the several members of the board of county commissioners of each county.”

Mr Greene –

I move its adoption

Mr Clark –

Seconded.

Mr Hedges –

I move to amend by requiring them to issue passes

Laughter

Mr Dixon –

I move to include members of the Convention ** 490 **

Mr Toole –

I move to amend by including stage coaches and steam boats

Mr Vivion –

I move to include slushier

Laughter.

Amendment lost –

Chairman –

(reads)

Section 12. No street railroad shall be constructed within any city, town or incorporated village, without the consent of the local authorities, having the control of the street or highway proposed to be occupied by such street railroad.

Mr Smith –

I have an amendment

Chairman –

Amend Section 12 by university after the word "street" in line one, the words "or other", Also insert same words after street in line 3.

Smith"

Mr Smith –

I move its adoption

Seconded and carried.

Chairman –

If there are no other amendments the Section will be considered adopted.

(reads)

Section 13. The General Assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already past. ** 491 **

Mr Toole –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and to connect the same with other lines; and the General Assembly shall by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph company, owning or having the control of a competing line, or acquire by purchase or otherwise any other competing line of telegraph.

Mr Burleigh –

I move to amend by inserting the word "telephone," after the word "telegraph" wherever it occurs in the section

Mr Eaton –

Second the motion

Carried

Chairman –

The section will be considered adopted as amended

(reads)

Section 15. If any railroad, telegraph, express or other corporation organized under any of the laws of this state shall consolidate by sale or otherwise, with any railroad, telegraph, express or other corporation organized under any of the laws of any other State or Territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State, in all matters that may arise, as if said consolidation had not taken place. ** 492 **

Mr Callaway –

I move its adoption

Seconded and carried

Chairman –

If there are no more amendments the section will be considered adopted –

(reads)

Section 16. It shall be unlawful for any person, company or corporation to require of its servants or employes [sic], as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes [sic] while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes [sic] thereof; and such contracts shall be absolutely null and void.

Mr Stephens –

I move its adoption.

Seconded and carried.

Mr Dixon –

Mr Chairman, I desire to offer three sections to be added to the file.

Chairman –

I will just ask the gentleman from Silver Bow to read them.

Mr Dixon –

At the end of Article add Sections 17, 18 and 19, as follows:

Sec. 17. The Legislative Assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or properly held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise or any of its privileges. ** 493 **

Sec. 18. The term “corporation,” as used in this article, shall be held and constructed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not formed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

Sec. 19. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him or her.

Chairman –

The section will be under consideration. I will read it (Reads Section 17)

Mr Callaway –

I move its adoption.

Seconded and carried.

Section 18 read

Mr Callaway –

I move its adoption

Seconded and carried

Section 19 read

Mr Vivion –

I move its adoption.

Seconded and carried

Mr Pemberton –

Mr Chairman, I move the committee now rise, report general file No 5, back to the convention, with the amendments, and recommend that as amended the file be adopted.

Seconded and carried.

At 12:05 Convention called to order President Clark in the chair.

Mr McCormick –

Mr President, as chairman of the committee of the whole I am instructed to report to the convention that the committee have had under consideration general file No 5, and ask until tomorrow morning to write out my report ** 494 **

The President –

The gentleman from Missoula asks leave until tomorrow morning to prepare the report of the committee of the whole on general file No 5. If there is no objection the leave will be granted.

Mr Green –

Mr President, I move we adjourn until two oclock this afternoon.

Seconded

Mr Merriman –

I want to state that Mr. Houser includes in his invitation to visit Jefferson &c all the attaches of the Convention.

The President –

The attaches of the Convention will be included in the invitation to visit Wicks.

Motion to adjourn put and carried

The President –

The convention stands adjourned until two oclock this afternoon. ** 495 **

Afternoon Session

Convention called to order at two oclock

President Clark in the chair

The President –

I am requested by Mr. Green to ask leave of absence for him for the afternoon. If there is no objection the leave will be granted

Roll call. Quorum present, as follows

Constitutional Convention

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne		
Collins		/
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass	/	
Eaton	/	
Eddy		
Ferris		
Fergus	/	
Green		
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley	/	
Langhorn	/	
Medhurst	/	
McCormick	/	
McSorley	/	
Merriman	/	
Mills		
Maloney		
McClintock	/	
Napton		
Pease		/
Pemberton	/	
Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	

~~Steel~~

Stephens /

Toole /

~~Thornton~~

Vivion /

Van Gasken /

Waterbury /

Mr. President /

** 496 **

Mr McCormick –

Mr President I ask the unanimous consent of the convention for the purpose of introducing the report of the committee on preamble and bill of rights.

The President –

If there is no objection it will be received

Mr McCormick –

Just read the report

The Secretary –

“Mr President – Your committee to which was referred the subject of preamble and to declare a bill of rights for the people of Montana beg leave to submit the following report and recommend its adoption by the Convention

McCormick
Chairman”

Mr Langhorne –

Mr President, I move the rules be suspended, the reading of the report be dispensed with and it be referred to the committee on printing

Seconded and carried.

The President –

I desire to ask for Mr Van Cleve, our Secretary, leave of absence for this afternoon, he is indisposed. If there is no objection ** 497 ** then leave will be granted

Mr Callaway –

Mr President I move you we now go into committee of the whole on the consideration of general file No 6.

Seconded and carried

The President –

Will Mr Callaway please take the chair. ** 498 **

Chairman –

The committee will come to order. General file No 6, Article on boundaries of the State of Montana

Section 1. The boundaries of the State of Montana shall be as follows, to-wit:
Commencing at a

2 point formed by the intersection of the twenty-seventh degree of longitude west from Washington, with

3 the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point

4 formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due

5 south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree and

6 thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky Moun-

7 tains; thence following the crest of the Rocky Mountains northward to its intersection with the Bitter

8 Root Mountains; thence northward along the crest of said Bitter Root Mountains to its intersection

9 with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree

10 of longitude northward to the boundary line of the British Possessions; thence eastward along said

11 boundary line to the twenty-seventh degree of longitude west from Washington; thence southward

12 along said twenty-seventh degree of longitude to the place of beginning. The boundaries of counties

14 [sic] shall be established by statute.

Mr Toole –

Mr Chairman, I offer an amendment

Chairman –

The gentleman from Lewis and Clarke, Mr Toole, offers the following:

Amend Section 1. By inserting after the word “beginning” line 17, the following:

“unless otherwise established by Congress prior to the admission of Montana as a state. In which event the boundaries so established shall constitute the boundaries of the State.

Toole.” ** 499 **

Mr Toole –

I move its adoption

Seconded

Mr Burleigh –

Mr Chairman, I offer a substitute for the whole section

Chairman –

The gentleman from the first district offers the following:

Substitute for Section 1.

Section 1. The boundaries of the state of Montana shall be same as the boundaries of the Territory of Montana, at the time of its admission into the Union. The boundaries of the counties shall be as provided by law”

Mr McCormick –

I move its adoption.

Seconded and carried.

Mr Toole –

I withdraw my amendment. It is covered by the substitute

Mr Proctor –

I move the substitute be adopted in place of Section 1.

Seconded and carried

Chairman –

(reads)

Section 2. Hereafter, the Homestead, consisting of the lands and family dwelling-house thereon,

2 also the improvements and out-buildings appurtenant thereto, of each head of a family resident in this

3 State, of the value not exceeding five thousand dollars, shall be exempt from forced sale on execution or

4 otherwise except for the purchase money, laborers' or mechanics' liens, or taxes.

Mr Toole –

I have an amendment.

Chairman –

Mr Toole offers the following strike out Section 2 and insert the following, in lieu thereof
“section 2. The legislative ** 500 ** Assembly shall enact liberal homestead and exemption laws.

Toole”

Mr Smith –

I move its adoption

Seconded

Mr Hunt –

I offer a substitute to the amendment of the gentleman from Lewis and Clarke

Chairman –

The gentleman from Choteau, Mr Hunt, offer the following as a substitute for the amendment:

Strike out Section 2, and insert as follows Section 2. The legislative assembly shall provide for the exemption to each head of family, resident within the state, of a homestead to consist of such area of land, with a dwelling house and buildings thereon, as provided by law. Such Homestead shall not be subject to sale or execution or other legal process except as provided by law, and no such exemption shall exceed the value of \$2500.00.”

Mr Hunt –

I move its adoption

Seconded

Mr Toole –

Mr Chairman, I think this whole matter of exemption would be submitted to the legislative assembly of Montana. It would be enough for ** 501 ** the convention to say that the legislature should enact liberal homestead and exemption laws, without saying what the value of the property should be. There is a wide diversity of opinion on that subject. I see the chairman of the committee reporting the subject has placed the figure at \$5000, and says nothing about where the property shall be situated, whether in a city, town or in the country. The legislature has placed the amount at \$2500.00 and there is a wide diversity of opinion on the subject. Now, if we leave it to the legislature to enact liberal homestead and exemption law, I think it will be done better than we can do it. I am opposed to the amendment and hope the first amendment offered may prevail

Mr Clarke –

I am with the gentleman from Lewis and Clarke.

Mr Hedges –

Mr Chairman, I think we are entitled to look at some other considerations in this matter. This is pretty certain to come before the people of the Territory and the Country at large. It contains the expression of the people of the Territory, and an invitation to a large section for immigrants, who may come and settle amongst us. I ** 502 ** think it should be left to the legislature to enact what we desire, liberal homestead laws. We had better say nothing about it than leave it in this style. We cant tell what the legislature may consider liberal exemption. It may consider a thousand dollars liberal. I think we should express our liberality in some such shape that will do us good. I am willing to go to the extent of \$5000, but I think there should be some limitation as to area. The point of forced sale on voluntary mortgages and liens, given by a party is not considered. I believe in the policy of securing just what we consider liberal terms and publishing them to the world

Mr Hunt –

I don't think the question is a very material one, but I think the exemption should be prescribed by the Constitution. I don't think the entire language should be left to the legislature, we should define what the legislature should do. For that reason I think it is better than the amendment offered by the gentleman from Lewis and Clarke.

Motion lost.

Mr Van Gasken –

Mr Chairman, an amendment. ** 503 **

Chairman –

Mr Van Gasken offers the following amendment – Add to the amendment of Mr Toole, “not to exceed in value \$2500.00” so it will read “The legislative assembly shall enact liberal homestead and exemption laws, not to exceed in value \$2500.00”

Amendment lost

Chairman –

The question is on the amendment offered by Mr Toole.

Carried

Chairman –

(reads)

Section 3. All lands granted by Congress to this State, not reserved by the State for public institutions, shall be limited to acquisition and purchase by actual settlers, under provisions to be prescribed by the State Legislature.

Mr Clark –

Mr Chairman, I offer an amendment.

Chairman –

Mr Clark offers the following.

Amend by striking out Section 3

Mr Proctor –

I move the adoption of the amendment.

Mr Eaton –

I have an amendment.

Mr McCormick –

It seems to me the motion to strike out takes precedence to a motion to amend. If this section is stricken out then it leaves the amendment to come up properly.

Chairman –

The question is on the motion to strike out. ** 504 **

Carried

Mr Eaton –

Mr Chairman, I now offer my substitute

Chairman –

Substitute to take the place of Section 3 “Section 3 all lands granted by Congress to the state and not reserved by the state for public instruction shall be disposed of as provided for by the legislative assembly

Eaton”

Mr Power –

I move its adoption

Seconded and carried

Mr Proctor –

I move to amend by inserting the word “law” in place of “the legislative assembly.”

Seconded and carried.

Mr Hedges –

Do I understand that the substitute was adopted.

Chairman –

Yes, sir, but if it is the pleasure of the convention, I can put the motion again.

Mr Eaton –

The substitute was declared adopted by the chair. I don’t see how we can ask upon it again

Chairman –

The chair can reconsider it

Mr Dixon –

I offer an amendment to the substitute.

Chairman –

The gentleman from the second district offers the following: ** 505 **

Amend substitute of Mr Eaton, by striking out the words "not reserved by the state for public institutions"

Mr Dixon –

I move its adoption

Seconded

Mr Dixon –

I merely desire to say if we leave it in that shape it will imply that the legislature cant provide by law for the lands reserved.

Mr Eaton –

I accept the amendment

Mr Cooper –

Mr Chairman, I offer a substitute

Chairman –

I think at this time the substitute is not in order

Mr Cooper –

I understand that the amendment has been accepted.

Chairman –

The chair takes it back, we are all correct.

Mr Clark –

I think it is not in order. The substitute offered by the gentleman from Gallatin with the amendments is the first thing for the Consideration of the Committee

Mr Dixon –

I desire to further amend the substitute by adding thereto so it will read. "The lands granted by Congress to the state, except as in this constitution otherwise provided, shall be disposed of as provided by laws"

Mr Eaton –

I accept that amendment. ** 506 **

Chairman –

The question is on the substitute as amended.

Carried by a viva voce vote of 17 ayes to 13 noes.

Mr Toole –

Mr Chairman, you will find on your desk a motion to strike out the substitute

Chairman –

The amendment of the gentleman from Gallatin, Mr Cooper, takes its place “All lands granted by Congress shall be classified and sold to actual settlers as provided by law.”

Mr Cooper –

I move the adoption

Seconded and lost.

Chairman –

The following is offered by Mr Toole. I move to strike out Section 3 as substituted

Mr Pemberton –

Second the motion. Now, Mr Chairman, I shall vote for the motion, just for the simple reason that it is impossible for me to see how these lands shall be disposed of in any other way than by law. Why the lands are granted to the state of Montana for no other purpose under the heavens. If we are going to dispose of them I don't know how it can be done except by law. And the legislature will necessarily be compelled ** 507 ** to do it without anything in the Constitution making it their duty to do it, and I cant see the necessity of the substitute.

Mr Clark –

I rise to a point of order. The consideration of a motion to strike out at this time is not in order. The committee have adopted the Section, hence it cannot be stricken out without a reconsideration and is reconsideration is not in order in committee of the whole.

Mr Pemberton –

If the rules close a fellow out there is no sense in talking.

Laughter.

Mr Toole –

I desire to alter something said by the gentleman from Silver Bow. If I am persistent in this matter it is because I want to keep out of the Constitution such sections as will render it of not much effect. In the first instance the section added nothing to the Constitution. If the constitution is silent on the subject as to the disposition of lands, then I undertake to say no disposition could be made of them except in the manner provided by the legislative assembly. Now, if that is the case, what is the use of inserting this clause? It is simply saying the ** 508 ** legislature may do something it is already authorized to do. We will get rid of just so much surplusage by leaving it out

Mr Dixon –

I desire to state my position. I practically agree with the gentleman from Lewis and Clarke, that the section is entirely unnecessary. And my desire to amend it was simply, if it passed, it would be in proper shape. I think there is no necessity for the section and I shall vote to strike it out

Motion to strike out carried.

Chairman –

(reads)

Section 4. Conceding the paramount title to the public lands to be in the United States, yet as between the residents of this State until the public lands are surveyed, the Legislature shall prescribe the manner and amount of such lands that any one person, or association of persons, may appropriate, occupy and use.

Mr Eaton –

I move to strike out Section 4 as printed

Seconded and carried.

Mr Pemberton –

I offer a substitute for a section to the added to the file and numbered Section 3.

Chairman –

(reads)

“Section 3. In the disposition of public lands granted by the government of ** 509 ** the United States to this state, preference shall always be given to actual settlers and the legislative assembly shall provide by law for carrying this section into effect.”

Mr Pemberton –

I move its adoption

Seconded

Mr Pemberton –

Mr Chairman, it is manifestly the disposition of the convention to give the preference in the disposition of these lands to the actual settler, and I believe it to be right. The substitute leaves it with the legislature to adopt laws which will give and secure to the actual settler the first right to the land. The men who come upon the land and improve it, and finds his house there should have the first right to pay the purchase price for the land and make his abiding place there. Probably this will meet the views of the gentleman from Missoula who has so nobly and zealously championed the rights of the actual settlers before this convention

Substitute carried.

Mr Stephens (amidst much confusion) –

I have got my actual settler in at last.

Laughter.

Mr Clark –

I move the sections of general ** 510 ** file No 6. Be adopted

Seconded and carried

Mr Smith –

Mr Chairman, I move the committee now rise, and instruct the chairman to report general file No 6, as amended, back to the convention and recommend that as amended it be adopted.

Seconded and carried.

Chairman –

The president will please take the chair

At 4:05 p.m. Convention called to order

President Clark in the chair

Mr Douglass –

Mr President, I move the convention go into committee of the whole for the consideration of general file No 7.

Seconded

Mr McCormick –

The chairman of the committee of the whole has not reported yet

Mr Callaway –

Mr President, I am directed by the committee of the whole, to report to the convention that the committee has considered general file No 6, and recommend its adoption as amended and I ask until tomorrow morning to make my report

The President –

If there is no objection the ** 511 ** chairman of the committee of the whole may have until tomorrow morning to prepare his report. The question is now on the motion that the convention resolve itself into committee of the whole for the consideration of general file No 7.

Motion carried

The President –

Will Judge Proctor take the chair

Chairman –

(reads)

Section 2. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all general elections: First – He shall be a citizen of the United States, or, not being a citizen of the United States, he shall have declared his intention, according to law, to become such citizen, not less than four months before he offers to vote. Second – He shall have resided in the State six months immediately preceding the election at which he offers to vote , and in the county, town or precinct such time as may be prescribed by law.

Mr Van Gasken –

I move its adoption

Seconded

Mr Hedges –

I have an amendment.

Chairman –

Amend by striking out “4 months” in line 4, and insert “one year”

Mr Clark –

I move its adoption

Seconded and lost

Mr Van Gasken –

I move the adoption of the section ** 512 **

Chairman –

The committee will come to order General file No 7, Article on rights of suffrage. Section 1. All elections by the people shall be by ballot.

Mr Smith –

I move to amend by adding, “and shall be free and equal.”

Voice –

I move its adoption

Seconded and lost

Mr Clark –

I move the adoption of the section as read.

Seconded and carried

Chairman –

(reads)

Section 2. Every male person over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all general elections: First – He shall be a citizen of the United States, or, not being a citizen of the United States, he shall have declared his intention, according to law, to become such citizen, not less than four months before he offers to vote. Second – He shall have resided in the State six months immediately preceding the election at which he offers to vote , and in the county, town or precinct such time as may be prescribed by law.

Mr Van Gasken –

I move its adoption

Seconded

Mr Hedges –

I have an amendment.

Chairman –

Amend by striking out “4 months” in line 4, and insert “one year”

Mr Clark –

I move its adoption

Seconded and lost

Mr Van Gasken –

I move the adoption of the section ** 513 **³¹

Seconded and carried

Chairman –

(reads)

Section 3. No elector shall be deemed to have lost his residence in this State by reason of his absence while in the civil or military service of the State, or the United States, nor while a student at any institution of learning, nor while kept at public expense in any poor house or other asylum, nor while confined in public prison.

Mr Clark –

I have an amendment

Mr Burleigh –

I have a substitute, Mr. Chairman

Chairman –

Substitute for Section 3. “Section 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States or of this State, nor while engaged in the navigation of the waters of the state, or of the United States, nor while a student at any institution of learning, nor while kept at any alms house or other asylum, at the public expense, nor while confined in any public prison.

Burleigh”

Mr Burleigh –

³¹ It appears as though an error occurred and Section two was repeated and Section 1 was omitted.

Will the chairman please put the word "State" before "United States."

Mr Burleigh –

I move its adoption

Seconded and carried by a viva voce vote ** 514 ** of 16 ayes to 14 noes.

Chairman –

(reads)

Section 4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged

2 from arrest during their attendance at elections, and in going to and returning therefrom.

Mr Burleigh –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 5. No elector shall be obliged to perform military duty on the days of election, except in time of war or public danger.

Mr Burleigh –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 6. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed at any military or naval place within the same.

Mr Waterbury –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 7. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States; and who shall not have resided in this State six months next before the election or appointment.

Mr Burleigh –

I move to amend by striking out “six months” in line 2; and inserting “one year” ** 515 **

Mr Toole –

It seems to me the words “at least” should precede “one year.”

Mr Burleigh –

I accept the amendment

Seconded and carried

Mr Douglass –

I move the adoption of the section

Seconded and carried

Chairman –

(reads)

Section 8. No elector shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election.

Mr Vivion –

I offer an amendment

Chairman –

Add to Section 8. “Provided a qualified elector may vote for any state officers in any part of the state, and for district officers in the several district

Mr Toole –

Mr chairman, I offer an amendment

Chairman –

Mr Toole offers the following. Amend by striking out Section 8.

Mr Burleigh –

I second the amendment of Mr Toole

Mr Vivion –

I will withdraw my amendment. Motion to strike out carried by viva voce vote of 15 ayes to 13
noes ** 516 **

Chairman –

(reads)

Section 9. No idiot or insane person shall be entitled to vote at any election in this
State.

Mr Waterbury –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 10. The General Assembly shall have the power to pass laws excluding from the
rights of suffrage persons convicted of infamous crimes.

Mr Van Gasken –

I move its adoption

Chairman –

I would suggest the section be renumbered

Mr Toole –

I move the chair make the proper corrections

Seconded and carried

Motion to adopt carried

Chairman –

(reads)

Section 11. The General Assembly may prescribe by law an educational qualification for electors, but no such law shall take effect prior to the year of our Lord One Thousand Nine Hundred, and no qualified elector shall be thereby disqualified.

Mr Clark –

I move to amend by striking out Section 11.

Seconded and carried ** 517 **

Chairman –

(reads)

Section 12. The General Assembly shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise.

Mr Burleigh –

I move its adoption

Seconded and carried

[Chairman –]

Section 13. The General Assembly may pass laws allowing women the right to hold any school

2 district office, and vote at any school district election.

Mr Vivion –

I move the section be stricken out.

Seconded and lost

Mr Hedges –

I move its adoption

Seconded and carried

Chairman –

It will be renumbered Section 11 – (reads)

Section 14. The general election shall be held on the Tuesday next after the first Monday of November, until otherwise provided by law

Mr Waterbury –

I move its adoption.

Seconded and carried.

Mr Clark –

I move general file No 7 as amended be adopted

Seconded and carried

Mr Toole –

I move the committee now rise, and report general file No 7 back with the several amendments
** 518 ** and instruct the chairman to recommend that as so amended it be adopted.

Seconded and carried

Chairman –

The President will please resume the chair.

At 4:20 Convention called to order

President Clark in the chair

Mr Proctor –

Mr President –

The committee of the whole, on general file no 7 have had the same under consideration made several amendments thereto and ask leave until tomorrow morning to report.

The President –

The gentleman from Yellowstone, Mr. Proctor, chairman of the committee of the whole on general file No 7 reports that they have had the same under consideration, and ask until tomorrow morning to report to the Convention. If there is no objection the leave will be granted

Mr McCormick –

Mr President, I move you ** 519 ** the rules be suspended and general file No 10 be taken up for consideration in committee of the whole. The next file is No 8, Mr Collins who was chairman of the committee reporting it, would take to be in the committee and is not present.

Mr Dixon –

Captain Mills is chairman of the committee

Mr Douglass –

Second the motion

Carried

The President –

The rules will be suspended and we will pass to general file No 10 in committee of the whole.
Will Mr Hedges please take the chair. ** 520 **

Chairman –

The committee will please come to order. General file No 10, Relative to appointment and representation. (reads)

Section 1. Until otherwise provided by law, our representative in the Congress of the United States shall be elected by the State at large. When a new apportionment shall be made by Congress the General Assembly shall divide the State into Congressional districts accordingly.

Mr Douglass –

I move its adoption.

Seconded and carried

Chairman –

(reads)

Section 2. The General Assembly shall provide by law for an enumeration of the inhabitants of the State at the first session held under this constitution, and as often thereafter as in the opinion of the General Assembly such enumeration shall be necessary; and shall revise and adjust the apportionment for Senators and Representatives on the basis of such enumeration, according to ratio to be fixed by law.

Mr McCormick –

I move its adoption.

Seconded and carried.

Mr Clark –

I think the language there should be improved. The general assembly shall at its first regular session held under this Constitution, provide &c

Mr Dixon –

I think that is a matter for the committee on adjustment. ** 521 **

Mr Clark –

I move the chairman be authorized to fix it

Chairman –

If there is no objection it will be done. (reads)

Section 3. The first General Assembly held under this constitution shall be constituted as follow: The Senate shall consist of the same number of Senators and the House of Representatives of the same number of Representatives as the Territorial Council, and the House of Representatives at the time of the admission of the State into the Union, and for that purpose the Council and representative districts, as then provided by law, shall constitute the Senatorial and Representative districts for the election of Senators and Representatives of the first General Assembly under this constitution.

Mr McCormick –

I move its adoption.

Seconded and carried

Chairman –

(reads)

Section 4. From and after the first session of the General Assembly of the State, the Senate shall consist of twenty-one members and the House of Representatives of forty-five members. And it shall be the duty of the first General Assembly to apportion the State into Senatorial and Representative districts accordingly. The Senatorial districts shall be numbered from one to twenty-one, if there shall be so many, and the Senators elected from said odd numbered districts shall hold their office for two years, and those elected from the even numbered districts shall hold their office for the term of four years; and thereafter all Senators shall be elected and hold their office for four years. The term of office for members of the House of Representatives shall be two years; provided, that there shall be at least one Senator from each county. ** 522 **

Mr Langhorne –

I have an amendment

Mr Proctor –

I have an amendment to offer

Chairman –

The gentleman from Yellowstone offers the following:

Amend in line 1, Section 4, Strike out all after word “Senate” and insert, “The Senate and house of representatives shall consist of such numbers as may be provided by law”

Mr Toole –

I move its adoption

Seconded and lost.

Mr Smith –

I have an amendment

Chairman –

Amend by striking out the last clause in line 8, beginning with the word “provided”

Mr Smith –

I move its adoption

Seconded

Mr Dixon –

Mr Chairman I offer an amendment

Chairman –

Mr Dixon offers to amend Section 4, by inserting after the word “state” the words, “or until otherwise provided by law”

Mr McCormick –

I move the committee rise, report progress and ask leave to sit again ** 523 **

Mr Van Gasken –

That is out of order, there is a question before the house.

Mr Howell –

A motion to rise is always in order. I second the motion.

Lost by a viva voce vote of 14 ayes to 15 noes.

Mr Burleigh –

I move the adoption of the amendment offered by Mr. Dixon.

Seconded and carried

Mr Smith –

I withdraw my amendment

Mr Merriman –

I offer a substitute for the section.

Mr Pemberton –

I don't think the gentleman from Jefferson is serious

Mr Merriman –

I don't think the gentleman from Silver Bow is right.

Mr Eaton –

Let us take a recess

Mr Vivion –

I move the committee now rise, report progress and ask leave to sit again

Seconded and carried

Chairman –

Will the President please take the chair

At 4:55 Convention called to order.

President Clark in the chair.

Mr Hedges –

Mr President, as chairman of the committee of the whole, I am instructed to report that the committee have had under consideration general file No 10, to report progress and ask leave to sit again

The President –

Mr Hedges, chairman [...] ³² committee of the whole [...] ³³ who have had under con[sideration] ³⁴
** 524 ** general file no 10, reports progress and asks leave to sit again. If there is no objection
the leave will be granted.

Mr Howell –

Mr President, I move the convention adjourn until tomorrow morning at ten oclock

Seconded

Mr Dixon –

I move to amend by making it 9 oclock this evening.

Mr Howell –

I accept the amendment.

Mr Eaton –

I move to amend by substituting ten oclock tomorrow morning.

The President –

You are out of order

Mr McCormick –

Mr President, I desire to ask leave of absence until tomorrow morning at ten oclock

Mr Toole –

So do I, I have business this evening

Mr Vivion –

Mr President, so do I.

Mr Merriman –

If that's the case I move to adjourn, or that we reconsider the ** 525 ** vote to adjourn and
make until ten oclock tomorrow morning.

Seconded

Mr Pemberton –

³² Paper ripped, indiscernible.

³³ *Id.*

³⁴ *Id.*

Second the motion to reconsider.

Lost.

Mr Toole –

Mr President, I desire to state my application for leave of absence is made in perfectly good faith and not with the purpose of delaying the body, but I have an appointment this evening and ask to be excused

Mr McCormick –

Mr President, I desire to state the same thing, I don't desire to skirk any responsibility, but I have an engagement I desire to file and want a leave of absence

Mr Hunt –

Mr President, I think a number of the gentlemen have engagements for this particular evening. I would be the last person to detain this convention or to adjourn without good reason, but we have done some good work today and I move to adjourn until tomorrow morning at ten oclock

Mr Vivion –

Mr President, I have received a telegram, and I have some business with ** 526 ** Jordyn Wade, or may have, and it may occupy my time during the evening session. I say I may have business and I may not, but I would like to be excused.

The President –

If there is no objection leave of absence will be granted to Mr. McCormick, Mr Toole and Mr Vivion.

Mr Medhurst –

Mr President, I have a social engagement, not business but a social engagement and would like a leave of absence

The President –

Leave of absence will be granted

Mr Callaway –

We cant get along with these gentlemen. I move we adjourn until ten oclock tomorrow morning.

The President –

The motion to adjourn until 7 oclock this evening was carried. I therefore declare this convention adjourned until 7 oclock this evening ** 527 **

Evening Session

Convention called to order at 7 oclock

President Clark in the chair

Roll call, quorum present as follows

Constitutional Convention

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne	/	
Collins		/
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass		/
Eaton		/
Eddy	/	
Ferris	/	
Fergus		/
Green		/
Hunt		/
Hedges	/	
Howell		/
Haase		
Hundley	/	
Langhorn	/	
Medhurst		/
McCormick		/
McSorley	/	
Merriman	/	
Mills	/	
Maloney		
McClintock	/	
Napton		

Pease	/	
Pemberton	/	
Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	
Steell		
Stephens	/	
Toole	/	
Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 528 **

Mr Burleigh –

Mr President, I move the convention now resolve itself into committee on the whole for the further consideration of general order No 10

Seconded and carried

The President –

Will Mr Hedges, please resume the chair ** 529 **

Chairman –

The committee will please come to order. We were under consideration of Section 4.

Mr Merriman –

Mr Chairman, I have a substitute.

Chairman –

“Section 4. From and after the first session of the general assembly of the state, the senate shall consist of 23 members and the house of representatives 45 members. And it shall be the duty of the first General Assembly to apportion the State into Senatorial and Representative districts accordingly. The Senatorial districts shall be numbered from one to twenty-one, if there shall be so many, and the Senators elected from said odd numbered districts shall hold their office for two years, and those elected from the even numbered districts shall hold their office from the term of four years; and thereafter all Senators shall be elected and hold their office for four

years. The term of office for members of the House of Representatives shall be two years; provided, that there shall be at least one senator from each county

Merriman”

Mr Pemberton –

The motion is not sustained. I move the adoption of Section 4 as previously amended

Seconded and carried.

Chairman –

(reads) ** 530 **

Section 5. It shall not be in the power of the General Assembly to increase the number of Senators and Representatives to a greater number in the aggregate than one hundred before the year A. D. 1900; and when the number of Senators and Representatives shall be increased by the General Assembly the ratio as to Representatives and Senators contained in section four of this article shall be preserved as nearly as practicable.

Mr Van Gasken –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 6. When a Senatorial or Representative district shall be composed of two or more counties, they shall be contiguous and the district as compact as may be. No county shall be divided in the formation of a senatorial or Representative district.

Mr Van Gasken –

I move its adoption

Seconded and carried.

Mr Burleigh –

I move general file No 10 be adopted.

Seconded and carried

Mr Burleigh –

Mr Chairman, I move you the committee now rise and instruct the chairman to report general file No 10, as amended, back to the convention, and recommend that as amended it be adopted

Seconded and carried ** 531 **

Chairman –

The President will please take the chair.

At 7:15 p.m. Convention called to order

President Clark in the chair

Mr Hedges –

Mr President, the committee of the whole on the consideration of general file No 10, have directed me to report, I ask until tomorrow morning to complete my report

The President –

If there is no objection the leave will be granted

Mr Callaway –

Mr President, today the Convention passed over general file no 8, for the reason that the chairman of the committee on executive department was absent. He is now present and I move you the Convention resolve itself into committee of the whole for the Consideration of general file No 8.

Seconded and carried

The President –

Will Mr. Dixon please take the chair ** 532 **

Chairman –

The committee will come to order. General file No 9, Article on Executive Departments. (reads)

Section 1. The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and superintendent of Public Instruction; each of whom shall hold his office for two years, beginning on the first Monday in January next after his election: *Provided* that the terms of office of those chosen at the first election under this constitution shall begin on the day appointed for the first meeting of the Legislative Assembly. The officer of the Executive Department, excepting the lieutenant Governor, shall, during their term of offices, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by constitution or by law.

Mr Van Gasken –

I move it adoption

Seconded

Mr Burleigh –

Mr Chairman, I do not think it is necessary to make a motion but I would like to call the attention of the chair to the construction of line 7. It reads there “term of offices,” wouldn’t “terms of office” be better

Mr Mills –

I think if the gentleman will look at it again he will find it correct. It is not the terms of office, but it is a term of offices.

Chairman –

The question is on the motion to adopt. ** 533 **

Carried

Chairman –

(reads)

Section 2. The officers provided for in section 1 of this article shall be elected by the qualified electors of the State at the time and places of voting for members of the “Legislative Assembly, and the persons, respectively, having the highest number of votes for the office voted for, shall be elected: but if two or more shall have an equal and the highest number of votes for either of said offices, the two House of the Legislative Assembly, at its next regular session, shall forthwith, by joint ballot, choose one of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined by law. The Governor, Secretary of State and Attorney General, shall constitute the board of canvassers to canvass the vote for officers provided for in section 1, but neither of such officers shall participate in the action of the Board while canvassing the returns for an office which he was candidate.

Mr Hundley –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 3. No person shall be eligible to the office of Governor, Lieutenant Governor or Superintendent of Public Instruction, unless he shall have attained the age of thirty years at the time of his election, nor to the office of Secretary of State, State Auditor or State Treasurer, unless he shall have attained the age of twenty-five years, nor to the office of Attorney General unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the State, or Territory of Montana, and be in good standing at the time of his election. In addition to the qualifications above prescribed each of the officers named shall be a citizen of the United States, and have resided within the limits of the State two years next preceding his election. ** 534 **

Mr Greene –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 4. The Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction, shall, quarterly as due, during their continuance in office, receive for their services compensation, which, for the two terms next ensuing after the adoption of this constitution, is fixed as follows: Governor, three thousand dollars per annum; Secretary of State, twenty-two hundred dollars per annum; State Auditor, State Treasurer, Attorney General and Superintendent of Public Instruction, two thousand dollars each per annum. The Lieutenant Governor shall receive the same per diem as may be provided by law for the Speaker of the Legislative Assembly, to be allowed only during the session of the Legislature. The compensations enumerated shall be in full for all services by them respectively rendered in any official capacity or employment whatever during their respective terms of office. No officer named in this section shall received, for the performance of any official duty, any fee for his own use; but all fees, fixed by law for the performance by either of them of any official duty, shall be collected in advance and deposited with the State Treasurer quarterly to the credit of the State. No officer mentioned in this section shall be eligible to, or hold any other public office during his tenure of said office, except as provided in this constitution. The Legislature may by law diminish the compensation of any or all of the officers named in this section, to take effect after the first two terms hereinbefore mentioned; but there shall be no increase of such compensation except by amendment to this constitution – *Provided however*, the Legislature may provide for the mileage of the Governor, Lieutenant Governor, Secretary of State, Attorney General and Superintendent of Public Instruction, while traveling within the State in the performance of official duty. ** 535 **

Mr Burleigh –

I have an amendment

Chairman –

Mr Burleigh offers the following:

Insert after the word “officer” on line 14, the words, “except regents of the state university”

Mr Burleigh –

I move its adoption

Seconded and carried

Mr Howell –

I have an amendment

Mr Smith –

Mr Chairman, I sent an amendment.

Chairman –

Amendment offered by Mr Smith, fixing the salaries of officers as follows:

Governor \$4000 – Secretary, \$1500 – State Auditor, \$2500 – State Treasurer \$2000, Attorney General, \$1000

Mr Smith –

I move its adoption

Seconded

Mr Mills –

Mr Chairman, before the vote is taken on this I would like to make an explanation and give our reasons for establishing these sums. The governor of Montana receives at present \$2600 – The office is really an honorary one, and very few men would expect to become candidates for the purpose of making money ** 536 ** out of it. \$3000 is, I think sufficient for the governor’s time, as very little of his time would be occupied. In relation to the secretary, the secretary of the Territory receives at present \$1800 a year and his fees amount to \$400 making \$2200, for all the labors he performs, and under the state administration he will be required to perform the same duties as under the laws of the United States for the Territory. Therefore we have placed his salary at \$2200. A general principle I hope the Convention will endeavor to move along

between the two extremes of extravagance and parsimony. We ought to frame our Constitution so that when it is submitted the people will not reject it at the polls. We should adopt an economical Constitution and a just one. Don't let us start off by paying our officers too much. I take it to be a mistake and ask the convention to deliberate on it. I believe this is the first time the question of salaries has been raised in the convention and I ** 537 ** trust you will give it consideration. As far as the amendment offered by the gentleman from Beaverhead is concerned, fixing the salary of governor at \$4000 or \$4500 all I have to say is that it seems to me it would strike that official very favorably and I am surprised to see if Coming from a gentleman of the legal profession I hope you will consider this salary question well before finally acting upon it for the reason that the committee have given it very careful consideration.

Mr Smith –

Mr Chairman, in behalf of my amendment and in answer to the gentleman from the second district I will say that I have made a request for higher salaries than were contemplated in the section as reported. The governor of the state of Montana, in my opinion should receive at least \$5000 a year, and I believe I am willing now to make it \$5000 instead of \$4000 as in the amendment. I do not think there is a state in the Union that pays the ** 538 ** head of the state executive so small a sum as \$3000 a year, if there is I do not at present call it to mind. As far as the views of the members are concerned some are in favor of less than \$5000 and some are in favor of \$6000 and \$7000 a year for the governor of the state. But I am willing that the governor of the State of Montana shall receive \$5000, It is as small a salary as a man occupying that position can live upon. If you say that the office of governor is an honorary one and make the salary so small thereby preclude from the office of the executive any one except he be a rich man. I say give them a good normal salary so that a poor man, if he qualified, can occupy the position. But, sir, it appears that the office of Secretary is more of an honorary office than any one provided for. The secretary of state don't have half the labor to perform that the secretary of the territory has, and yet you insist upon giving him ** 539 ** \$2200. I say cut his salary down to \$1500 it is clearly more of an office of honor than any other office created. In the report the salary of the auditor is fixed at \$2000, and the auditor of the state is one of the most important offices. An office in which there is more work than any other office, and I do not think \$2500 a year is too much. The salary of treasurer, I leave the same as fixed in the report \$2000 The salary of attorney general I have fixed at \$000 instead of \$2000 as in the report. The gentleman from the 2d district says he is surprised to see the amendment coming from a man in the profession of the law. Now, sir, if you will look at the constitution of other states you will see that they don't pay the attorney general over a thousand dollars a year. The attorney general is not precluded from following his profession, the practice of the law, and it is really a stepping stone to give him greater and better practice. I think one ** 540 ** thousand dollars per annum is sufficient, It is a big advertisement in his profession and does not preclude him from practicing as it did before

Mr Proctor –

Mr Chairman, I think the committee who had this matter in charge, certainly made these fees low enough. If anybody can see anything more than a living in the fees, he can live cheaper than a majority of the men in the territory. A thousand dollars for a layer to be attorney general –

Mr Smith – It don't keep him from his practice

Mr Pemberton –

This section requires that all officers shall reside at the Capitol. Now, I want to see the man in the State of Montana who will give up his practice and go to the capitol and be attorney general for \$1000. Give up his practice. The law requires him to go to the Capitol and reside there. If you are going to elect men who reside at the Capitol to the offices of governor, secretary of State, Auditor and treasurer ** 541 ** etc, it is all very well, but I want to show at some of these things myself. (Laughter) Now, sir, I don't know anything about what they pay the officers of other states, except on state in the Union, Missouri, I believe it is in the Union, this Missouri (Laughter). I think, sir the governor of Missouri is paid \$5000 and the attorney general \$3000 and the Secretary of State \$3000 and the Secretary of State \$3000. There are none of the state officers of the State of Missouri paid less than \$3000 a year. And the law requires them to move their homes and reside at the capitol. I say, sir, it is worth \$2200 a year to perform the duties of Secretary of State. I don't care whether he has anything to do or not. Mr Chairman, I am not in favor of exorbitant salaries, but I am in favor of paying a man decently living salary, a salary that he can live on without stealing. If you want to make a man a thief, put him in office and then cut his salary down and let him steal or starve, and he'll ** 542 ** steal (Laughter). He'll get there some way as long as you pay him starring wages. He'll knock down, it's human nature. Mr Chairman, the idea of starting out here with such fees as stated by my friend from Beaverhead County –

Mr Smith –

My calculation –

Mr Pemberton –

You take it from the officers and put it on the governor. Let the gentleman leave his business in Beaverhead County and come here to be Attorney general and live on honor.

Mr Smith –

My –

Mr Pemberton –

It will give him reputation, this honor will. But as old Jack Falstaff says "honor wont mend a leg." No, sir, honor wont buy grub. (Laughter) The fees should be graded up –

Mr Smith –

I'll grade them up

Mr Pemberton –

You grade the governor up and you grade the others down

Mr Smith –

I grade two up and two down.

Mr Pemberton –

I am in favor of paying all the officers more, but I am not in favor of taking money away from the secretary or attorney general and putting it on the governor. Let the fees ** 543 ** stand as they are reported, if that is the opinion of the convention, but in the name of good, common sense don't cut them down. I may want to get some of these fees myself, but I don't want to starve to death to get it.

(Laughter)

Mr Waterbury –

Mr Chairman, the gentleman who has just occupied the floor seems to have a great sympathy for the attorney general, and I have no doubt its perfectly natural. Now, on the contrary my sympathies run towards the governor. I think he is the most important monkey in the cage. Now if the other officers are expected to mingle amongst strangers in the country and entertain them except the governor. The governor isn't expected to live in a log cabin in one of thee gulches. He is supposed to have enough to furnish a decent looking cabin at all events, if he don't get into a frame house. Now, how the governor is to be expected to make a decent appearance in Helena, even on \$3000 is something I don't understand. ** 544 ** If he is the most industrious man in the world, these people running around this country tourists &c would take up all his time and he couldn't make a living. I propose that the governor shall have enough to support himself and family, and he has got to get it from the State. He cant earn it outside. It isn't very dignified to have our governor of the glorious state of Montana working in a carpenter shop. I am opposed to reducing the salaries as reported. I don't think they are too high. I don't see how the governor is going to pay his way short of \$6000. I have a lot of sympathy for the governor because I know he is going to have trouble on \$3000 a year. He is supposed to have decent furniture at least in one room. A time may come when some of us will want to be governor. Damn it, I half aspire to myself. I am perfectly willing the gentleman should be attorney general, if he don't follow me for a drink too often. (Laughter) But my idea is to leave the salaries ** 545 ** as they are now, and as far as the governor is concerned I would like to have it placed at \$6000, and I would vote for it outside of any self interest I have in it.

(Laughter)

Mr Hedges –

I would like these question submitted separately when we came to vote on them. I ask for a division of the question

Seconded

Chairman –

A division of the question being called the question is now on the amendment to Section 4, line 4, changing the salary of governor from \$3000 to \$4000

Mr Smith –

Make it \$5000

Chairman –

At the suggestion of the gentleman from Beaverhead it is changed from \$4000 to \$5000, are you ready for the question

Mr Clark –

Mr Chairman, before the question is put, I desire to add my conviction to those already stated by two or three gentleman in regard to the salary of the governor. As far as the salaries of the other officials are concerned I believe they are all right and I am opposed to reducing them ~~to less than \$100 a year.~~ ** 546 ** The salary of the governor as reported by the standing committee is too small. The office of governor is supposed to be filled by a gentleman who has a family. A governor is as liable to have as large a family as anybody else. And nobody can live in this Territory and fill the position of governor on a salary of \$3000. I say it is impossible that a man can support a family on \$3000 a year and live in the capitol. It is naturally expected that the governor should entertain more or less. Every now and then he must give a reception. And when Mr Waterbury is elected he is supposed to keep some very good whiskey. (Laughter) There is a disposition here to pay the ment who fill the offices of honor and trust, too little. Such, in fact is the custom throughout the United States. I have seen our ministers in the Capitols of Europe, side by side with other ministers and almost in penury. The American legation at Paris, previous to the present minister, Mr Morton, was situated in a sort of little, mean apartment, because he only received ** 547 ** \$17,000 a year. Not enough in that expensive capitol to be situated any better. And unless he is a rich man he is not able to maintain his dignity and the dignity of the country he represents. As suggested by the gentleman from Beaverhead, if we fix the alary of governor at \$3000 it simply precludes any one except a rich man from accepting the position. It is certainly a matter for grave consideration. We should fix the salary of governor at such an amount as would place it within the reach of the poorest man in the Territory. Those are my reasons for favoring the amendment offered by the gentleman from Beaverhead. Amendment to governor carried by viva voce vote of 16 ayes to 13 noes

Chairman –

The next amendment changes the salary of Secretary of State from \$2200 to \$1500.

Lost ** 548 **

Chairman –

The next amendment fixes the salary of state auditor at \$2500 instead of \$2000 as in the report

Lost

Chairman –

The next is the salary of state auditor \$2000, the same as in the report

Carried

Chairman –

The next is attorney general. The amendment provides for a salary of \$1000.

Mr Smith –

I withdraw my amendment as to that

Mr Chairman –

An amendment by the gentleman from Madison, Mr Howell, Amend Section 4, by striking out the words on lines 16 & 17 “but there shall be no increase of such compensation except by amendment to this Constitution” and insert, “but no such diminution or increase shall effect the salaries of the officers then in office, during their term”

Mr Howell –

I move its adoption

Seconded and carried

Mr Mills –

Mr Chairman I offer an amendment

Chairman –

In line 8 change “session” to “sessions” ** 549 **

Mr Howell –

I move its adoption

Seconded and carried

Mr Clark –

I move the adoption of the section as amended.

Seconded and carried.

Chairman –

(reads)

Section 5. The supreme executive power of the State shall be vested in the Governor, who shall see that the laws are faithfully executed.

Mr Waterbury –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 6. The Governor shall be commander-in-chief of the military forces of the State, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection, or repel invasion.

Mr Waterbury –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 7. The Governor shall nominate, and, by and with the consent of the Senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for, and may remove any such officer for incompetency, neglect of duty, or malfeasance in office. If during the recess of the Senate a vacancy occur in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when he shall nominate some person to fill such office. If the ** 550 ** office of Secretary of State, State Auditor, State Treasurer, Attorney General or superintendent of Public Instruction, shall be vacated by death, resignation or otherwise, it shall be the duty of the Governor to fill the same by appointment,

and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law. The Senate in deliberating and acting upon executive nominations may sit with closed doors.

Mr Pemberton –

Mr Chairman, I offer an amendment.

Chairman –

Amend by striking out the words “and may remove any such officer for incompetency, neglect of duty, or malfeasance in office.” Commencing on line 3 and ending on line 4.

Mr Clark –

I move its adoption

Seconded and carried by a viva voce vote of 17 ayes to 12 noes

Mr Proctor –

I move the adoption of the section as amended

Seconded and carried

Chairman –

(reads) ** 551 **

Section 8. The Governor, Secretary of State, and Attorney General shall constitute a board to be known as the Board of Pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose, in all cases of offenses against the State, except treason or conviction on impeachment. The Legislature shall by law prescribe the sessions of said board, and the manner in which applications shall be made, and regulate the proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing, and the relief applied for, shall have been given by publication in some newspaper of general circulation, at least once a week for two weeks. The proceedings and decision of the board shall be reduced to writing, and with their reasons for their actions in each case, and the dissent of any member who may disagree, signed by them and filed with all papers used upon the hearing, in the office of the secretary of State. The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and said board shall at such session continue or determine such respite or

reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the Legislature, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation and pardon-granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto. ** 552 **

Mr McCormick –

I move its adoption

Section and carried.

Chairman –

(reads)

Section 9. The Governor may require information in writing from the officers of the Executive Department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may at any time he deems it necessary appoint a committee to investigate, and report to him upon, the condition of any executive office or State institution. The Governor shall at the commencement of each session, and from time to time, by message, give to the Legislative Assembly information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall also send to the Legislative Assembly a statement, with voucher, of the expenditures of all moneys belonging to the State and paid out by him. He shall also at the commencement of each session present estimates of the amount of money required to be raised by taxation for all purposes of the State.

Mr McCormick –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 10. He may, on extraordinary occasions, convene the Legislative Assembly by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session, and other matters incidental thereto. He may also, by proclamation, convene the Senate in extraordinary session for the transaction of executive business. ** 553 **

Mr Proctor –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 11. Every bill passed by the Legislative Assembly shall, before it becomes a law, be presented to the Governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider the bill. If then two-thirds of the members elected agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house it shall become a law, notwithstanding the objections of the Governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the Governor to the Legislative Assembly within five days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the Legislative Assembly shall, by their adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the Secretary of State, within five days after such adjournment Sundays excepted,) [sic] or become a law.

Mr Clark –

I move its adoption

Mr Pemberton –

I move to amend by inserting wherever the word “five” occurs, inserting “ten”

Seconded and carried

Mr Toole –

Mr Chairman, I offer an amendment

Chairman –

Amend Section 11 by striking out the word “elected” on line 5 and insert ** 554 ** the word “present”

Seconded and carried

Mr Waterbury –

I move the adoption of the section as amended

Seconded and carried

Chairman –

(reads)

Section 12. The Governor shall have power to disapprove of any item, or items, of any bill making appropriations of money, embracing distinct items, and part or parts of the bill approved shall be law; and the item or items disapproved shall be void, unless enacted in the manner following: If the Legislative Assembly be in session, he shall transmit, to the house in which the bill originated, a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Mr Mills –

I offer an amendment.

Chairman –

Amend section 12 by inserting after the word “shall” on line 4. The words “within five days.”

Mr Power –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 13. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

Mr Burleigh –

I move the section be stricken out. ** 555 **

Mr Toole –

I would like to hear from Governor Waterbury

Laughter

Motion lost by viva voce vote 15 ayes to 16 noes

Mr Mills –

I move the adoption of the section

Seconded and carried by viva voce vote of 16 ayes to 15 noes.

Chairman –

(reads)

Section 14. In case of the failure to qualify the impeachment or conviction of felony or infamous misdemeanor of the Governor, or his death, removal from office, resignation, absence from the State or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office, for the residue of the term, or until the disability shall cease, shall devolve upon the Lieutenant Governor. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue commander-in-chief of all the military force of the State.

Mr Merriman –

I move its adoption

Mr Burleigh –

Will the chairman of the committee please tell me what “infamous misdemeanor” is?

Mr Stephens –

I move “misdemeanor” be stricken out and “crime” inserted

Seconded and carried

Mr Pemberton –

I move the adoption of the section ** 556 **

Seconded and carried

Chairman –

(reads)

Section 15. The Lieutenant Governor shall be President of the Senate, and shall vote only when the Senate is equally divided. In case of the absence or disqualification from any cause as applies to the Governor or the Lieutenant Governor, or when he shall hold the office of Governor, then the president *pro tempore* of the Senate shall perform the duties of the Lieutenant Governor until the vacancy is filled or the disability removed.

Mr Mills –

There is a mistake there. That word “or” on line 3 should be “to”

Chairman –

It will be corrected

Mr Clark –

I move the adoption of the section

Seconded and carried

Chairman –

(reads)

Section 16 In case of the failure to qualify in his office, death, resignation, absence from the State impeachment, conviction of felony or infamous misdemeanor, or disqualification from any cause, of both the Governor and Lieutenant Governor the duties of the Governor shall devolve on the president of the Senate *pro tem*, until such disqualification of either the Governor or Lieutenant Governor, be removed, or the vacancy filled; and if the President of the Senate, for any of the above named causes, shall become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House.

Mr Merriman –

Change the word “misdemeanor” in line 2, to “crime” I move that ** 557 **

Seconded and carried

Mr Hedges –

I suggest the word “become” on line 6 should be change to “be”

Mr Clark –

That can be change by the revision committee. I move the adoption of the section

Seconded and carried

Chairman –

(reads)

Section 17. There shall be seal of this State, which shall be kept by the Secretary of State, and used by him officially. It shall be known as “The Great Seal of the State of Montana.”

Mr Langhorne –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 18. All grants and commissions shall be in the name and by the authority [sic] of the People of the State of Montana, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

Mr Van Gasken –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 19. The powers and duties of the Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction, other than is herein provided, shall be as prescribed by law. ** 558 **

Mr Power –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 20. An account shall be kept by the officers of the Executive Department and of all public institutions of the State of all moneys received by them severally from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the Governor under oath, they shall also, at least twenty days

preceding each regular session of the Legislative Assembly, make full and complete report of their actions to the Governor, who shall transmit the same to the Legislative Assembly.

Mr Waterbury –

I move its adoption

Seconded and carried

Chairman –

(reads)

Section 21. The Governor, Secretary of State, and Attorney General shall constitute a board of State Prison Commissioners, which board shall have such supervision of all matters connected with the State Prison as may be provided by law. They shall also constitute a Board of Examiners, with power to examine all claims against the State, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the State, except salaries and compensation of officers fixed by law, shall be passed upon by the Legislature without first having been considered and acted upon by said board.

J. H. Mills,
Chairman Committee on Executive Department.

Mr Douglass –

I move its adoption

Seconded and carried

Mr Van Gasken –

I move General file No 8 ** 559 ** be adopted as amended

Seconded and carried

Mr McCormick –

Mr Chairman, I move the committee now rise and instruct the chairman to report general file No 8 back to the convention with the various amendments made thereto in committee of the whole, and recommend that as amended it be adopted

Seconded and carried

Chairman –

Will the President please take the chair. ** 560 **

At 8:40 Convention called to order
President Clark in the chair

Mr Dixon –

Mr President, the committee of the whole have instructed me as chairman to report that they have had under consideration general file No 8, and report it back with amendments and recommend that as amended it be adopted as part of the Constitution I will ask until tomorrow morning to make my report

The President –

Gentlemen of the Convention the gentleman from the Second Judicial District, Mr Dixon, Chairman of the Committee of the whole, reports that they have had under consideration general file No 8, and have adopted certain amendments. He asks until tomorrow morning to make his report if there is no objection the request will be granted

Mr Howell –

I move we adjourn

Mr Mills –

If the gentleman will withhold his motion a moment, I would like to offer a resolution. ** 561
**

The Secretary –

“Resolved that copies of each file as adopted by the convention and reported from the committee on engrossment shall be printed for the use of the convention

Mills”

Mr Mills –

Mr President, I will say this matter has been talked over, and it will be necessary for the committee on revision, to have the articles as adopted printed, before we can, with any degree of certainty make a revision of the parts to go into the Constitution. I also think each member should have a copy so that he can look over and examine it slowly and carefully and make any suggestions as to errors that occur. The committee would recommend that they be printed in pamphlets form like this (the rule) but not leaded so widely. I make this motion now because the reports should go to the printer as early as possible

Mr Howell –

I move the resolution be adopted

Seconded and carried

Mr Pemberton –

Mr President, I move we adjourn until tomorrow morning ** 562 ** at ten oclock

Seconded and carried

The President –

The Convention stands adjourned until tomorrow morning at ten oclock. ** 563 **³⁵ ** 564 **

Sixteenth Day –

January 29, 884

Morning Session

Convention called to order at ten oclock

President Clark in the chair.

Roll call. Quorum present as follows:

Constitutional Convention

	Aye.	No.
Abascal		/
Burleigh	/	
Browne	/	
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass	/	
Eaton	/	
Eddy		/
Ferris	/	
Fergus	/	
Green	/	
Hunt	/	
Hedges		/

³⁵ This page is the image of a folder /labeled Proceedings. 16th day, Jan. 29, 1884.

Howell	/	
Haase		
Hundley	/	
Langhorne		/
Medhurst	/	
McCormick	/	
McSorley	/	
Merriman	/	
Mills	/	
Maloney		
McClintock	/	
Napton		
Pease	/	
Pemberton	/	
Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	
Steel		
Stephens	/	
Toole	/	
Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 565 **

Journal of yesterday read and approved

Mr Fergus –

Mr President, I ask the unanimous consent of the Convention for the purpose of offering a report

The Secretary –

“Mr President, Your committee on agriculture, manufacture, and immigration to whom was referred resolution No 12 relative to contagious diseases, report the same back to the Convention and recommend that it be not adopted by the convention. That it is more properly a matter of legislation

James Fergus
Chairman

Mr Pemberton –

Mr President, I move the rules be suspended and the report be adopted

Seconded and carried.

Mr Proctor –

Mr President, the report of the Committee of the whole on general file No 7 ** 566 **

The Secretary –

“Mr President, the committee of the whole to whom was referred General file No 7, have had the same under consideration and have made several amendments thereto and have instructed the chairman to report the same back to the convention and recommend that it be adopted as amended, to wit: -

Strike out Section 3 and insert the following:

Section 3. For the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence when employed in the service of the State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States, nor while a student at any institution of learning, nor while kept at any alms house or other asylum, at the public expense, nor while confined in any public prison.

Also amend Section 7, by striking out the words “six months” and inserting “one year”

Also amend by striking out Sections 8 and 11.

Proctor

Chairman ** 567 **

Mr Proctor –

I move its adoption

Seconded and carried

Mr Proctor –

Mr President, I believe the report naturally goes to the committee on engrossment

Mr Waterbury –

Don't it go without a motion

Mr Proctor –

That is my understanding

The President –

It will naturally go to the committee without a motion

Mr Hedges –

Mr President –

The report of the committee of the whole on general file No 10 ** 568 **

The Secretary –

“To the Hon. President of the Constitutional Convention of Montana,

The committee of the whole having had under consideration General File No 10, relating to apportionment and representation, has instructed me to report the same back to the Convention with the following amendments to wit:

Amend the phraseology of Section 2, as follows: The General Assembly at its first session held under this Constitution shall provide by law for an enumeration of the whereabouts of the state.

Amend Section 4, in line 1, by inserting after the word “State” the words “and until otherwise provided by law.”

And and [sic] as thus amended recommends the adoption of the several sections as part of the Constitution of Montana

Hedges

Chairman” ** 569 **

Mr Douglass –

I move its adoption

Mr Howell –

Mr President, I move to amend that wherever the word “legislature” appears it be stricken out and “general” be inserted”

Mr Proctor-

I believe that general rule was adopted

The President –

The gentleman from Yellowstone is correct

Mr Proctor –

I move the report be adopted as amended

Seconded and carried

Mr Callaway –

Mr President, report of the committee of the whole on general file no 6. ** 570 **

The Secretary –

“Mr President, The committee of the whole have had under consideration General file No 6, entitled, “article on boundaries of the state of Montana,” and instruct me to report to the convention the following amendments.

Strike out Section 1, and substitute as follows.

Substitute for Section 1

Section 1. The boundaries of the State of Montana shall be the same as the boundaries of the Territory of Montana at the time of its admission into the union. The boundaries of counties shall be as provided by law

Strike out section 2, and insert in lieu thereof as follows:

Section 2. The legislative assembly shall enact liberal homestead and exemption laws.

Strike out Section 3, and insert in lieu thereof as follow.

Section 3. In the disposition of public lands granted by the government of the United States to this State preference shall always be given to actual settlers and the legislative assembly shall provide by law for carrying this section into effect

And strike out Section 4.

Callaway

Chairman” ** 571 **

Mr Vivion –

I move the adoption of the report

Mr Pease –

Mr President, I have a substitute for it

The Secretary –

“Substitute for Section 2, file No 6, Hereafter the homestead consisting of the lands and family dwelling house thereon also the improvements and out buildings appertaining thereto, of each

head of family resident in this state of the value not exceeding five thousand dollars, shall be exempt from forced sale on execution or otherwise except for the purchase money, laborers or mechanics liens or taxes

Pease”

Mr Merriman –

Move its adoption

Seconded

Mr Burleigh –

Mr President I desire to offer an amendment to the substitute

Mr Collins –

Will an amendment be in order at this time

The President –

Yes sir. ** 572 **

The Secretary –

“Add to the substitute that the lands claimed as homestead shall not exceed one-third of an acre, if in any plot of a city town or village, nor if elsewhere on hundred and sixty acres

Burleigh”

Mr Pease –

I accept the amendment.

Mr Powers –

I have an amendment.

The Secretary –

“Insert \$3500, instead of \$5000

Power”

Mr Mills –

Move its adoption.

Seconded

Mr Waterbury –

In order that the members may know what they are doing I call for a reading of the section

Mr Toole –

Mr President, I don't think there is any report of the committee of the whole that has five thousand in it. That section was entirely stricken out and the substitute was adopted authorizing the legislature to enact liberal homestead and exemption laws. ** 573 **

The President –

This is a substitute just offered by Mr Pease.

Mr McCormick –

Has the report been adopted

The President –

No sir.

Mr Burleigh –

Do I understand that amendments are not to be offered until after the report has been adopted

The President-

Yes sir

Mr Merriman –

I move the adoption of the report

Seconded and carried

The President –

The report is adopted. Now the substitute offered by Mr Pease is the question before the convention

Substitute read.

The President –

The question is now on the amendment offered by Mr Power to insert \$2500 instead of \$500

Mr Toole –

Mr President, I think sir, if this matter of legislation is to be put into the Constitution, in order to make ** 574 ** the Section complete we had better say to every cartman there shall be exempt his cart and horse, to the artisan, his tools and to every professional man his library, and to the miner his gold and pick, and horses and harness in order to make the exemption complete. I believe this section is out of place here and for that reason I oppose it. There will be ample opportunity when the legislature meets to provide that there shall be property exempt from execution and forced sale. It seems to me entirely improper at this time to make this amendment.

Mr Collins –

Mr President, I believe as the gentleman from Lewis and Clarke, but I think the exemption entirely too large. I shall vote for the amendment, but shall also vote against the entire proposition

Mr Pemberton –

Mr President, this whole matter was discussed yesterday. This amendment or substitute for the section as adopted yesterday, is offered this morning by the gentleman from Gallatin, and is offered bodily as the section we struck out of the report yesterday. It seems to me there can be no reason for voting for the substitute this morning when it was voted down yesterday. It is simply going outside of the line according to my judgment ** 575 ** and are legislating in the constitution. We ought not to do it. Every time we put a statute in the constitution, every time any matter of legislation goes into the constitution, we are providing voters against it when it shall have been submitted to the people. Many men will vote against it if you load it down with such questions as this. I agree with the gentleman from Lewis and Clarke. If we are going to legislate here today, let us fill in exemption laws to every head of a family and every man who has a calling in the state. The section as it stands now, that the legislature shall pass liberal homestead exemption laws is ample and sufficient. Is it not expected that we will risk something. That something will devolve upon the legislature, or will we take it out of their hands and provide a statute of exemptions that cant be changed except by amendment of the Constitution. Time will change the circumstances of men in this country, and it should be provided here so the legislature can pass laws to meet the views of the people. We are not legislating for today but for all future, and let us have a constitution that will give the legislature power in the future to provide for the wants of the people. What would ** 576 ** be the proper exemption laws for today in ten years from now will be entirely different. Let us leave the constitution in such a fix that the legislature may at any time and all times legislate in the interests of the people. If we close the legislature around with such restrictions as this we simply tie it up. We do that which we have no right to do. We put a statute in the constitution instead of the fundamental principles of the constitution. Let us vote it down and let the section stand as it stood when reported back to the convention

Mr Pease –

Mr President, believing this to be the proper time and place I offered the resolution and I want to see it adopted by the convention

The President –

The question is on the amendment to strike out five thousand and insert twenty five hundred.

Mr Pease –

Ayes and noes.

Voice –

Ayes and noes

Roll call as follows ** 577 **

	Aye.	No.
Abascal		/
Burleigh		/
Browne	/	
Collins	/	

Mr Collins –

Mr President, I want to state that I will vote for this now, but when it comes up for final passage I will vote against it. I vote aye.

Carroll	/
Callaway	/
Catlin	/
Cooper	/
Dixon	/
Daly	
Douglass	/
Eaton	

Mr Eaton –

Mr President for the same reason as Mr Collins I vote aye

Eddy	/
Ferris	/
Fergus	/
Green	/

Hunt /
Hedges /

Mr Hedges –

What is the question

Mr President –

The question is on the amendment to strike out \$5000 and insert \$2500.

Mr Hedges –

I vote no

Howell	/	
Haase		
Hundley	/	
Langhorne		
Medhurst	/	
McCormick	/	
McSorley	/	** 578 **
Merriman	/	
Mills	/	
Maloney		
McClintock	/	
Napton		
Pease	/	
Pemberton	/	
Proctor	/	

Mr Proctor –

For the purpose of making this as obnoxious as possible I vote no

Powers	/	
Robinson		
Smith	/	
Savage	/	
Steell		
Stephens	/	
Toole	/	
Thornton		
Vivion	/	

Van Gasken /
Waterbury /
Mr. President /

The President –

The result of the vote is 25 ayes and 17 noes. I declare the amendment carried. The question now recurs to the original motion

Mr Stephens –

Mr President, I understand there was two amendments

The President –

One amendment was accepted by the moved

Mr Stephens –

With the amendment as accepted how would the matter stand

The President –

To fix the sum at \$2500. ** 579 **

Mr Stephens –

There was another amendment

The President –

The Secretary will read it

The Secretary –

Add to the substitute that the lands claimed as the homestead shall not exceed one third of an acre if in any plot of a city town or village and if elsewhere, 160 acres”

The President –

That is the amendment offered by Mr Burleigh and accepted

Mr Stephens –

Mr President I would like to say a few words. It may be that I am entirely wrong of course, that is possible, but I would sooner err in a question of this kind, in attempting to get a homestead for families on the public lands, than to be in doubt about it. Now I have heard the remark here from some gentleman that he would vote so and so on the proposition so as to make it as obnoxious as possible. Well, now, Mr President, it seems to me that there can be nothing

obnoxious in providing homes for this class of people, the actual settlers. It seems to me there can be nothing very obnoxious in anything ** 580 ** of the kind. We may differ as a matter of policy in providing a home for a man of family; providing a place where a man's wife and little ones shall have a chance to cover their heads, when the tide of adversity and misfortune shall sweep over him, and sweep away from him all his property and possessions, tell me there is anything obnoxious in providing a man under such circumstances with his little home, is something I cant agree to. To think that a man after losing all he has in the world, all his personal property, as well, all being swept in the maelstrom of adversity, to think if he could find a little place where his wife may put her head and her little ones nestle to her bosom, and say thank God, the creditors can reach that. Sir, to say that is obnoxious. I say it is not to any well regulated mind. Let every man bring it home to himself, to his own wife, his own family, his own little children, to find a place to lay his head in peace and quiet when the snow storms of the Rocky Mountains come sweeping over him. I deny there is anything obnoxious in that. It may be obnoxious for the wealthy to care to provide anything for the poor man. Now, it is said this thing should be left entirely to the legislature. Then I say God keep the little ones, if the Legislature ** 581 ** is in the same frame of mind we find the members of this convention in. I say don't leave the thing to the legislature when the people of the Territory have seen fit to send these men to the Convention. What is the amendment? That the legislature shall enact liberal homestead and exemption laws. Then I say where will we find a liberal law if the legislature is in the same frame of mind as the convention today. Will they say that a man and his little ones in the Territory has no right to be respected, when there is a lobby influence brought around them in the state capital? Where, then, I say, if we, gentlemen, here today, cant consider this question, is it to be considered? What show has a man and wife and little children in the legislative halls? Tell me they will enact liberal laws? What does that mean? Liberal laws? Who is to judge of the question of liberal laws? What liberality? I say if the legislature shows no more liberality than we here today, there is nothing liberal in it. Who is to be the judge? One man may say it is liberal to give a man five acres of ground. It is liberality that he should have a cabin with a window and a door. It is liberality that he should have a cabin with no window, but just a simple door that the air we breathe ** 582 ** may reach him. Then you say there is legislation in it. There is nothing like legislation in it. We have adopted measures heretofore in this convention that had more legislation in it. The only legislation in this is the money question, the rest of the section stand upon the broad principle that so much land shall be exempt from forced sale. Now, sir, there is not much legislation in that. Not half as much as we have passed here before. I will be through in a minute. Mr President, this gives a man 160 acres as his homestead. Now the government makes that homestead exempt from all debts prior to the issuing of patent, and only prior to the issuing of patent. Now, the government is very liberal in its donation and gives 160 acres, but it hasn't gone far enough. As soon as the patent issues, his 160 acres are exempt no longer. We want to provide for that. We want to provide his home exempt not only before patent is issued but for all time to come. That is all I want, and it appears to me it is no so very obnoxious a matter. We cant do anything wrong by providing for this here. We know we are only providing a home for a man. In the spirit of justice and in the spirit of equity, and from a magnanimous spirit ** 583 ** we should

not leave this convention without saying that we have given a homestead to the man and wife and not left it to the legislature to jumble around and not make any provision at all. It is right for this convention to say so and I hope they will.

Mr Proctor –

Mr President. I did not propose to have anything to say on the proposition. I understood yesterday we had discussed this matter sufficiently for the convention to understand the proposition. But I wish to say that I will not allow the gentleman to place me in the position of being against liberal homestead exemptions. I will not allow the gentleman to place me in that position. I defy him or any other gentleman on this floor to go further than I will, in the proper place, to protect the homesteads of the poor. But Mr. President, if we adopt this proposition we may as well pursue the course suggested by the gentleman from Deer Lodge, Mr. Waterbury, by placing at the head of every article “Be it enacted by the constitutional convention of Montana in Convention assembled” and I will go further and add the proposition of the Medes and Persians, that “this law shall be irrepealable for all time to come,” And prohibit legislation sessions and everything else. We could so assume all wisdom, virtue and honesty, that is ever ** 584 ** to be in Montana, we could then combine all wisdom and virtue and everything else and we could provide laws that shall exist throughout all future time

Mr Pease –

Ayes and noes –

Mr Pemberton –

Second the call for ayes and noes

Roll call

Mr Hedges –

Mr President, I just desire to say a word in explanation of my vote. I am heartily in favor of liberal exemption but now that the amount is cut down to \$2500, I am opposed to the amendment entirely. I don’t think that is a liberal exemption and will vote against. ** 585 **

Constitutional Convention

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		/
Collins		/
Carroll		/

Callaway /

Mr Callaway –

Mr President, I admire the tender, noble sentiment of the eloquent gentleman from Missoula, Mr Stephens, and know they came from a philanthropic brain and a noble heart, but believing that this is improper in this shape to come with the constitution I shall have to vote against it. I think when it is made the duty of the legislature to enact liberal homestead and exemption laws, the legislature will consider its duty and do so. Therefore I vote no.

Catlin /

Cooper /

Dixon /

~~Daly~~

Douglass /

Eaton /

Eddy /

Ferris /

Fergus /

Green /

Hunt /

Hedges /

Howell /

~~Haase~~

Hundley /

~~Langhorne~~

Medhurst /

McCormick /

McSorley /

Merriman /

Mills /

** 586 **

~~Maloney~~

McClintock /

~~Napton~~

Pease /

Pemberton /

Proctor /

Powers /

~~Robinson~~

Smith /

Savage /

~~Steell~~

Stephens /
Toole /
~~Thornton~~
Vivion /
Van Gasken /
Waterbury /
Mr. President /

The President –

The result of the vote is ayes 9, noes 28. The motion is lost

Mr Pemberton –

Mr President, I move you the report of the committee of the whole be adopted as amended and referred to the committee on engrossment.

Seconded and carried

Mr McCormick –

Mr President, as chairman of the committee of the whole who had under consideration general file No 5, I desire sir, to make a report. ** 587 **

The Secretary –

“Mr President, The committee of the whole to which was referred General file No 5, have had the name under consideration and have instructed me as chairman of such committee to report the same back to the convention with the recommendation that as amended in committee the same be adopted, to wit:

Amend Section 2, adding to said section the following, “Provided, that all such laws shall be subject to further repeal or alteration by the legislative assembly.”

Also amend Section 5 by inserting after the word “railroad” and before the word “Companies,” in line 1, the words “and transportation and express.”

Also amend Section 5, by adding after the words “carrier” in line 2, the words “and subject to legislative control, and the legislative assembly shall have power to regulate, and control by law the rates of charges for the transportation of passengers and freight by such companies, as common carriers from one point to another in the state.”

Amend Section 5, by striking out the word constitute in line 2, and inserting in lieu thereof the word “construct”

Also amend Section 6, by inserting after the word “Corporation” in line 1, and 2, the ** 588 words, “express and other transportation companies”

Also add to said section the following “neither shall it in any manner unite its business or earnings with any business or earnings of any other railroad corporation”

Also amend by adopting the following as a substitute for Section 7:

“Section 7. All individuals, associations and corporations shall have equal rights to have persons and property transported on and over any railroad, transportation or express route in this state. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad or transportation or express company between persons or places within this state but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation or express company, shall be allowed to charge, collect or receive (under penalties which the legislative assembly shall prescribe) any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of freight or station upon its route or line within ** 589 ** this state. No railroad, express, or transportation company, nor any clerk manager or employer thereof, shall give any preference to any industrial association or corporation, in furnishing cars or motive power for transportation.”

Also amend Section 8, line 1 by inserting after the word “railroad” the word “express”

Also amend Section 11, by adding after the word “served” line 3, as follows:

“And no company, or corporation formed under the laws of any other country State or Territory, shall have, or be allowed to exercise or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character erected under the laws of this State.”

Also amend Section 12 by inserting after the word “street” in line 1, the words “or other.” Also insert the same words after the word “street” in line 3.

Also amend Section 12, by inserting after the word “telegraph” wherever it occurs in said section the word “telephone.”

Also amend by adding the following to be numbered, Section 17, 18 and 19.

Section 17. The legislature shall not ** 590 ** pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee contracted or incurred in the operation use or enjoyment of such franchise or any of its privileges.

Section 18. The term corporation as used in this article shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges or corporations not possessed by individuals or partnerships, and all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.”

Section 19. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stock holder be individually liable in any amount over and above the amount of stock owned by him or her."

All of which is respectfully submitted

W. J. McCormick
Chairman" ** 591 **

Mr Merriman –

I move the report be received and adopted

Seconded

Mr Power –

Mr President, an amendment

The Secretary –

"Move to strike out Section 6, general file no 5."

Power"

Mr Power –

Mr President, I heartily approve of the other sections in file No 5, but we must not legislate too much. We want more railroads here than we have now. I think every member of the Convention would like an additional railroad through this town, and should be friendly to them in a business way, where I don't interfere with our rights but I think we want more roads here now as badly as we wanted the first one if not worse.

Mr Eaton –

Mr President, I move the amendment be laid on the table

Seconded

Mr McCormick –

I hope that motion will not prevail for the simple reason, if it does it will carry the whole bill with it

Mr Eaton –

Under that condition of things I ** 592 ** withdraw my motion

Mr Pemberton –

I move the report of the committee be adopted and be referred to the committee on engrossment.

Seconded and carried.

Mr Dixon –

Mr President, the report of the committee of the whole on general file No 8. ** 593 **

The Secretary –

“Mr President, The committee of the whole to whom was referred general file No 8, hereby report that they have had the same under Consideration and have adopted the following amendments thereto, viz: -

1st In line 4, Section 4, strike out the word “3” and insert instead thereof “five

2nd In line 8 Section 4, change the word “session” to “sessions”

3rd In line 14, Section 4 after the word “office” where it first occurs insert the words “except regent of the State University.”

4th In line 13 Section 4, after the word “diminish” insert the words “or increase.”

5th Strike out the words “but there shall be no increase of such compensation except by amendment to this Constitution” in lines 16 and 17 of section 4.

6th Strike out the words “and may remove any such officer for incompetency, neglect of duty or malfeasance in office.” In lines 3 and 4, Section 7.

7th Amend Section 11 by striking out the word “elected” in line 5, and inserting instead thereof the word “present” and by striking out the words “elected to” in line 7 and inserting instead there of the words ** 594 ** “present in”

8th Amend Section 11 by striking out the word “five” in line 10, and the same word in line 13 and insert instead thereof the word “ten” in both places.

9th In section 12, after the word “shall” insert the words “within five days,” in line 4.

10th Amend Section 14, by striking out the word “misdemeanor” in line 12, and inserting instead thereof the word “crime”

11th Amend Section 15, by inserting the word “of” instead of the word “or” in line 3

12th Amend Section 16 by striking out the word “misdemeanor” in line 2 and inserting instead thereof the word “crime”

And the committee recommended that said general file No 8, with the amendments thereto above stated be adopted as part of the constitution

W.W. Dixon

Chairman" ** 595 **

Mr Waterbury –

I move the adoption of the report.

Seconded and carried

Mr Hunt –

Mr President, I have an amendment

Mr Power –

Mr President, an amendment

The Secretary –

“Amend by striking out of general file No 8, all after section 13.

Mr Hunt –

Mr President I move to adoption of the amendment

Seconded ** 596 **

Mr Hunt –

Mr President, in my motion to amend the report I desired to strike out all of this clause which reads as follows:

“The governor shall not, during his term of office, be elected a senator of the United States &c”

Mr President, my object in moving this is to try to prevent this convention from incorporating, as a fundamental principle, in its constitution, any such unwise principle of government as I deem this to be. Sir, it is almost wholly without precedent. With the exception of two or three states in the thirty-eight United States which have adopted constitutions there is not with the exception of two or three I say a single one that prescribes such a limit as this as a fundamental principal. This is wrong. It is unwise and this convention misinterprets its duty when it incorporates or seeks to incorporate this in the constitution. We misinterpret what a constitution is. Daniel Webster when he sat in the senate of the United States and when John C. Calhoun in 1833 was trying to force upon the people of the United States the doctrine of States rights, said that “as constitution is that fundamental regulation which determines the manner in which the public authority is to be regulated.” That definition asserts clearly and concisely what

the fundamental regulation is. It is that regulation which affects the political body itself and governs the very political ability of the government but Mr President, legislation has already crept into the reports of the committee, and legislations has ** 597 ** already been adopted in the constitution of the state of Montana. We must therefore beware of such experimental negative restrictions. The gentleman reporting the measure have based this section upon a rotten foundation of and the entire substructure should be knocked from under it; nor does it deserve the support of a majority of the men in the convention today. I say to the gentlemen in this convention do not embody any clause in the constitution, which in the course of a few years, when emergencies shall arise, you will have grave cause to regret it! Follow the history of this American country, that we have! We find one of the essential principles in the expounding of liberty to be that the people shall promote their servants without restriction from the law to the high, from the high to the higher and from the highest to the most exalted positions! What, sir, is American liberty? Is it based upon a necessity to circumscribe officers with restrictions to prevent barter and trade? No sir, but if this clause must stay then I go further and refer to the gentleman from Missoula, esteemed friend Mr McCormick, chairman of the committee on bill of rights and insert that he embody in his report that the meant to be elected to office in Montana are corrupt until they are proven innocent and we shall then base the Constitution and government on the theory that the executive is to be filled by an unscrupulous officer, and the state positions occupied by tricky politicians whose first duty is self aggrandizement and whose second thoughts are patriotism and love of country. Sir, I do not believe in the maxim that all men are guilty until proven innocent. I believe that the most of the American people will stand by the old principle that every man ** 598 ** is innocent until proven guilty. I believe in that precedent and sir, we would do full well to follow it if we are any such a body of men as I hope we are. Such a precedent does not warrant such an article as this. The many have very grave cause to regret that such a section as this was ever ingrafted in these laws which form the constitution of a portion this country. I can not find in the cursory examination I have given to state constitutions, any such clause as this in the constitutions of but one or two states in the United States. Sir, taking it from the beginning of the history of this country, in the matter of the election of the senators from the various states, I can recall fifteen or twenty men who have served their states with fidelity and distinction and with great honor who were elected from the gubernatorial chairs of their states to the Senate of the United States. Let me recall to the convention the instance of Oliver P. Morton the famous war governor of Indiana, who took from his own private possession a enough money to equip and arm nearly a regiment of soldiers to fight for their country. The people had elected him governor of their state, and the legislature said let us elect him to a higher position where his abilities can find full scope; and they sent him to the Senate of the United States. There are no restrictive clauses in the constitution of Indiana, which prevented it. ** 599 ** I recall the instance of Justin Pock of Missouri, who served his state with distinction and honor. He had just been elected governor, when the people said let us give this man the higher position he merits, and they sent him to the United States Senate. I recall the instance of Samuel J. Kirkwood, a man like Governor Morton, elected during the war times, as governor of Iowa, who guided the state in those turbulent times with distinction and fidelity. He was elected to the Senate because the people wished it. I recall the

instance of Newton A. Booth, of California, who served the people as governor of that state, with honor, and they sent him to the Senate of the United States. I recall the instance of Vance of North Carolina, who serves his state today as United States Senator. He was governor of the state when he was elected, and there was no restrictive clause in the state constitution which forbade it! I call to mind Wade Hampton of South Carolina descendant of revolutionary heroes who served his state with distinction as governor and who is now serving his people with honor as senator. Of Cullom of Illinois, who was recently elected while governor of the state, to the United States Senate. Of Kellogg of Louisiana, who was governor of the state and was twice elected by the legislature of his state to be Senator of the United States and sir with the exception of Kellogg, from my own native poor, ** 600 ** God-forsaken, oppressed state of Louisiana. I defy any man in this convention to point out one man elected to the Senate of the United States while governor of his state, who has not served with credit to his country and distinction and honor to himself & his state!

Now, sir, we come here, forty-five of us from various parts of the Territory of Montana, and we propose to disregard these precedents laid down by men who have been greater than we and who have formed constitutions as important as ours, and we are asked to embody in this constitution principles which are bad in form and which imperil the future of the state! There will be instances in the history of this state, as there have been in all states in early times when a crises shall arise. We will want men of the hour to arise before us and stand pre-eminent. Such has been the history of the past, men are suddenly needed to meet emergencies. I recall Abraham Lincoln. He, sir, rose up when the great need of the country seemed to demand little common accord that he should be the chief executive. Sir, you cannot, in this American country, prevent the people from promoting their servants. It is one of their inherent republican rights which shall be inviolate and must remain so. Nor do I think it is logical to hold that the governor will use his power to promote his own election. That I believe is the main and only cogent reason that has been advanced by the friends of Mr Clause for its retention – but rather sir, would the election of an executive of a state place before the legislature's notice one man at least who has earned the suffrage of his people. ** 601 ** The governor is usually a worthy man but an impecunious one. He is selected for his dork by the direct suffrages of the people and they are the best judges of his qualifications for a higher position, and sir, if they say he should go to the Senate of the United States, they have a right to ask the legislature which they have directly elected, to send him there and I believe, sir, it is the gratification and just recognition of an honorable ambition by a state. I believe it is contrary to every free government to restrict the candidate ambition of the citizen or of the people. I believe the people are as apt to choose a good governor as is the legislature to choose a good senator, and I believe if you say to the legislature this man whom we have chosen governor is an able and faithful servant and we wish him made senator that he should be elected. But Mr President under the constitution if this clause remain we cant send him up any higher. He is barred by his fidelity, has served us well and with credit but he is poor and our constitution forbids that he be a candidate. Then let us follow the constitution of Nevada; let us obey the humiliating example

of announcing that a senatorship is for sale and let us ask for the money bags, what a mistake! What an error to fall into!

I tell you sir, the whole clause is unwise, and if you carry such restrictions into the constitutions you may as well prohibit the vice President of the ** 602 ** United States from becoming a candidate for the Presidency. And if you had been enacted would our history contain the names of John Adams and Thomas Jefferson? We might precisely as well prevent a man from rising from the position of Secretary of State to the office of President, and prevent the cabinet officers of the country from being called to higher offices. If such propositions were adopted I ask again would Thomas Jefferson and John Adams or James Madison have risen to be presidents of the United States? Why sir, the whole idea of this clause is in direct conflict with the doctrines of American liberty! It does not agree with the sentiments of the people. Our history is replete with instances in older times, but we have even a better instance furnished us in late years of the promotion by the people. What a sad yet magnificent instance sir is presented to us within the case been years, when the people took the shortly tow head boy and placed him at the head of their college in Hiram; when they called him from that portion and placed him at the head of a portion of the Union Army; when near the close of the war after the battle of Chickamauga, they thought his services and his noble defense of his country's flag demanded his future service in civil matters and they elected him to Congress; and when he had served his people there so pre-eminently so faithfully and so well, the people said we will send him higher, and the great state of Ohio made him their United States Senator! But Sir before he took his seat in the Senate the people of the whole Country said there is no restrictive cleanse in the Constitution of the United States and we will make this man ** 603 ** serve us in a more trusted capacity, and they elected him to the very exalted of exalted positions, the Presidency of the whole nation! And Mr. President of his service to his countrymen in that position what a monument is left us! And what an illustration, pathetic and immortal, was bequeathed us of the solemn right of the people to honor their servants. And what a singular and almost prophetic exposition of the liberty of his country did he leave, when he wrote with trembling and even hand his own obituary strangulatus pro republica – James A. Garfield!

Mr President, I am opposed to that clause as it stands. I am willing to trust the people. I am willingly to trust the legislature, and I believe the time will come when the foolishness of the clause will be apparent to every man who contemplates on the wisdom of the government.

Mr President, I desired, sir, only to express my views in this matter briefly and I fear I have consumed too much time. The clause sought to be incorporated is not apace with our ideas of freedom in this Country. Men of this convention beware lest you hamper the organic law of one state by inserting measures of peril! There should be only such clauses in this constitution as can be handed down to posterity in this epoch of our country's history "crowned with triumphs of liberty and love."

Sir, I am not ready to believe that this body will take one step towards cramping the unrestrained blessings of national liberty. ** 604 **

Applause

Mr Mills –

Mr President, after the very eloquent and learned appeal of the gentleman from Choteau county, I feel that a practical suggestion will not be amiss. I deem it my duty to state the reason for incorporating this clause in general file No 8. The gentleman seems to convey the impression to the convention that the election of a governor is a prohibition upon him from ever thereafter becoming a senator of the United States. Now, that is not the case. It is not the spirit or letter of the clause.

Mr Hunt –

I interpret it so, sir.

Mr Mills –

No, sir. We have defined the term of the office of governor at two years. That is the limitation placed upon it. The people have selected him for that particular place to serve them for two years, and that is not long to debar him from being a candidate for the United States Senate. The object of this provision which experience has caused to be placed in some of the more recent constitutions, is to prevent the chief magistrate of the state from using his office influence and the patronage at his disposal as Governor to subserve his personal interests by securing thereby his election as Senator. It is in states as in monarchies. With each change of administration the sentiment will be "The king is dead! Long live the King!" Divested of his official power, entering the list with his peers, in a struggle equal in other respects, if he has been a good officer and is worthy of preferment, there is nothing in this section to hinder or trammel the legislature or himself in the achievement of his honorable ambition. During the term of office of the governor there can have been but one regular session of the legislature. The term of office of the governor will expire on the first Monday in primary each alternate year, and he steps out and becomes a private citizen. I think it is a wise provision and should go into the constitution that during his tenure of office he shall not be elected a senator. The gentleman refers to the ** 605 ** constitution of the United States. I can see a very many good things in it, but I know also that the constitution of the United States is greatly defective, and on constitution will in many respects be an improvement on it. We are living in a progressive age and should not follow in the footsteps of our fathers where experience has shown their work was in complete or defective.

Mr Callaway –

Mr President, with very much pleasure I have listened to the parhelic and leaned appeal by the gentleman from Choteau. He has cited some prevailing exceptions that he would not like to establish as a rule. I have listened to the reasons of Capt. J Mills and I think they are good reasons. When the gentleman speaks as he does of these exceptions let me mention to him

one. That great character in history the noble Yates of Illinois [sic]. When Yates was governor of Illinois [sic], great man immortal in American history with most wonderful brains, large enough to take into the the [sic] heart of the American union, Stephen A. Douglass, died. The people said Yates, by reason of his position must go to the United States Senate, and let the lieutenant governor succeed you and fill the vacancy in your office. Yates said no, gentlemen, I propose to go to the Senate of the United States, but I propose to be elected by the legislature of Illinois [sic], when ** 606 ** my term of office has expired. Now, my reason for supporting this clause is I want to remove from the executive all chance of chucking or jerking him into the Senate. The gentleman has given many instances here, but when you go over the history of the United States you will see that more men have been elected to the United States Senate who have bought and sold legislatures for that purpose. I want to see this clause adopted and incorporated into the constitution and I will vote against striking it out.

Mr Smith –

Mr President, yesterday in the committee of the whole I advocated the striking out of this section, and have since that time had no occasion to change my opinion in regard to it. The gentleman from Choteau has opined the discussion and certainly agrees with my sentiments in every respect. I can see no good that can come from restricting the liberty of the honorable men who are elected to offices within the gifts of the people. The Senate of the United States today number amongst its members nine ex-governors of the states of the union, and those men have served their country well as governors and stand today amongst the most eminent senators of the United States. I cant see ** 607 ** why, if a man is acting as governor of a state, that should disqualify him for the position of United States Senator. I see no reason why the legislative assembly and the people have no right to take that man and place him in the Senate of the United States if they so desire. I believe in the doctrine of rotation in this I believe it is right that new blood should occasionally take some of the positions of the country, but I am no such advocate of the question that I would see a man hold a full term of office before he can be permitted to take another. I don't believe in the doctrine to such an extent, as would disqualify the best talents and best minds of the country from getting into office. I see no reason why if a man has served us faithfully and well as governor that we should term him out and that because he has served us he shall not be permitted to have any other office within the gift of the people. I see no reason why, if a man has been a good man and has been a faithful and honorable servant to the people, why we should not place him higher. I hope the gentleman today in considering their action yesterday will change their opinions and vote to leave it to the legislature ** 608 ** to say who shall be our United States Senators.

Mr Hedges –

Mr President, I have been gratified by the eloquence expressed on the subject but I have not been convinced. I wish simply to enter one protest this subject against the idea that the place of United States Senator is higher than that of Governor of Montana. I don't believe it

Applause.

I know that in sentiment – proper sentiment would say a man would leave a place in the United States to accept the governorship of Montana. I believe in states rights to that extent, and, gentlemen, if it is true that the constitutions of other states don't present us precedents on this matter it is because experiences of late years has shown the necessity of it, and in response to that necessity states are beginning to incorporate such things into their Constitutions. I think too much of the governorship of Montana to see it made the stepping stone to a seat in the United States Senate and on that ground I am opposed to striking out the section.

Mr Proctor –

Mr President, I merely wish to explain my vote. The Constitution ** 609 ** of the United States defines the qualifications of senators and representatives in Congress, and this state has no right to provide for qualifications thus controlled and provided for in the Constitution of the United States, therefore I will vote to strike the clause out.

Mr Waterbury –

Mr President, I don't want to impress this body with my eloquence (Laughter) but I want to explain my vote too, because it don't correspond with my acts. Yesterday I voted to keep that clause in the constitution, but today I will change my mind. I believe it is a much more honorable thing to be governor of Montana, as it stands today, then to be United States Senator. I say the office is a great deal higher – Soto voce – Prospective view. (Applause.) I think the Section savors strongly of legislation and this point has a great effect upon me. It seems to me, like the gentleman observed here, that we have a strong disposition to criticize the Constitution of the United State, and amend it I think, a little. But I don't think we have all the intelligence in the United States here. I am perfectly willing we should assume the intelligence of Montana, ** 610 ** but when we want to assume the intelligence of the United States, Missouri and all, I think we will have to open our mouths mighty wide. (Laughter). Now I propose to let the legislative part as it is, but I think there is a whole lot of things we have already put into the constitution, that we should have left to the people. As it is we are all the intelligence of Montana, and I think while we are about it, we had better do it all and put it in the shape of the law of the Medes and Persians and make it irrepealable forever, as the gentleman from Yellowstone suggests. I think it is very wise to assume that the legislature elected by the same constituency that elected us, will not have as much discretion two years or twenty years hence as we have. Mr President, I doubt not that the legislature of the future state of Montana when it assembles here at the capital will possess as great intelligence as we. And may have a little more unless we are very careful – (Applause).

I think, sir, the influences that can be brought by the governor by reason of his office are not the influences brought in the last few years to make senators. In the history of California and Nevada it shows that it is not the prestige [*sic*] of ** 611 ** the governor that makes senators, no, sir, darn sorry to say it, but it requires hundreds of thousands of dollars to make them

usually. And, sir, I think there are men in this Territory to day, who are accumulating wealth and great money, for that very purpose, and I am well aware, sir, that some of those gentlemen have the idea to the seat in the United States Senate. And I am well aware although, perhaps it may be granted that it requires money, to be elected governor, this particular aspirant wont have it.
(Laughter)

Mr Hunt –

Ayes and noes.

Mr Green –

Ayes and noes

The President –

The question before the Convention now is the motion to strike out Section 13. The ayes and noes are asked for, the Secretary will call the roll.

The roll call resulted as follows

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne		/
Collins		
Carroll		/
Callaway		/
Catlin	/	
Cooper		/
Dixon		/
Daly		
Douglass	/	
Eaton		/
Eddy		/
Ferris	/	
Fergus	/	** 612 **
Green	/	
Hunt	/	
Hedges		/
Howell		/
Haase		
Hundley		/
Langhorne	/	

Medhurst	/
McCormick	/
McSorley	/
Merriman	/
Mills	/
Maloney	
McClintock	/
Napton	
Pease	/
Pemberton	/
Proctor	/
Powers	/
Robinson	
Smith	/
Savage	/
Steell	
Stephens	/
Toole	/
Thornton	
Vivion	/
Van Gasken	/
Waterbury	/
Mr. President	/

The President –

The result of the vote is as follows ayes 20, noes 17. The motion to strike out prevails. Here is an amendment by Mr Power, which the Secretary will please read

The secretary –

“Amend Section 4, General file No 8 by making the salary of Governor four thousand dollars instead of five thousand

Power” ** 613 **

Mr McCormick –

Mr President, I have an amendment. An amendment to the amendment.

The Secretary –

“Move to amend Section 4 as amended in committee of the whole by striking out the words “five thousand” in line 4, and inserting in lieu thereof the words “three thousand”

McCormick

Mr Cooper –

Mr President, there are amendments here ahead of that

The President –

Yes, sir. It was overlooked. The Secretary will read it.

The Secretary –

“Amend section 7, line 4 after word “governor” insert “3” instead of “5”

Mr McCormick –

I withdraw my amendment.

Mr Burleigh –

I move its adoption

Seconded.

Mr Burleigh –

What is the amendment of the gentleman from the 3rd district

The Secretary –

“Amend section 4, file 8, by making the salary of governor four thousand ** 614 ** instead of five”

Power”

“Amend Section 4, line 4, after the word governor insert 3 instead of 5

Cooper”

Mr Burleigh – Cooper –

Ayes and noes.

The President –

The question is on the amendment to the amendment , to strike out five and insert three the ayes and noes have been asked for. The Secretary will call the roll

As follows:

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		/
Collins	/	
Carroll		/
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass	/	
Eaton		/
Eddy	/	
Ferris	/	
Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley	/	
Langhorne		/
Medhurst		/
McCormick	/	
McSorley	/	
Merriman		/
Mills	/	
Maloney		
McClintock		/
Napton		
Pease	/	
Pemberton		/
Proctor		/
Powers		/
Robinson		
Smith		/
Savage		/
Steell		
Stephens		/
Toole		/

Thornton		
Vivion	/	
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 615 **

The President –

The result of the vote is as follows, ayes 18 noes 20. I declare the motion lost. The question now recurs to the amendment of Mr Power to insert four instead of five.

Mr Collins –

Mr President, I offer an amendment to the amendment.

The Secretary –

“Move to amend by striking out “five thousand and insert thirty six hundred
Collins”

Mr McCormick –

Second the motion.

McCormick – Callaway –

Ayes and noes.

The President –

The secretary will call the roll.

As follows:

	Aye.	No.
Abascal		/
Burleigh	/	
Browne		/
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		

Douglass	/	
Eaton		/
Eddy	/	
Ferris	/	
Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell	/	** 616 **
Haase		
Hundley	/	
Langhorne	/	
Medhurst		/
McCormick	/	
McSorley	/	
Merriman		/
Mills	/	
Maloney		
McClintock	/	
Napton		
Pease	/	
Pemberton		/
Proctor		/
Powers		/
Robinson		
Smith		/
Savage	/	
Stell		
Stephens		/
Toole		/
Thornton		
Vivion	/	
Van Gasken		/
Waterbury		/
Mr. President		/

The President –

The result is as follows:

Ayes 23, noes 15. The amendment prevails, the question is now on the original motion as made by the gentleman from the 3rd district, Mr Power.

Motion carried.

Mr McCormick –

Mr President I have an amendment to offer to section 4.

The Secretary –

“Move to amend Section 4 by striking out in line 5 the word “two” so it will read twenty six hundred dollars

McCormick” ** 617 **

Mr McCormick –

That is for Secretary of State

Mr Douglass –

Move its adoption.

McCormick – Langhorne –

Ayes and noes

The President –

The ayes and noes are demanded the Secretary will call the roll. ** 618 **

Mr Collins –

Mr President, before the vote is taken I want to say that the present auditor and treasurer are now receiving \$1500 per year, and we receive the services of as competent men as the state can get. And I also see there have been a number of Contestants for the position by men wholly competent for it. I say the state auditor and treasurer should receive no more for their services than they would in any other business capacity, I think \$2000 is entirely sufficient, and I believe if the constitution adopts a high rate of salaries it will be very doubtful whether the people will vote for it. I would rather leave the salaries out altogether or if you fix them at all, fix them small for the first term and let the legislature fix them afterwards. But fix them at such a rate that the people cant object to the constitution on that ground.

Mr Mills –

Mr President, it seems to me the remarks of the gentleman are not germane to the proposition before the convention. The question is simply as to the salary of Secretary of State. And there is something to be considered as ** 619 ** to the duties this officer has to perform and of the responsibilities attached to the office. The relative duties under state administration and which are now performed are about alike. We have fixed the salary at \$2200, which includes the

present salary and the fees allowed the office. Some gentleman last evening said the Secretary of State of Montana would not have half the work to perform that the Secretary of the Territory has. How he arrives at the conclusion I do not know, and if it will not occupy too much time I would like to have it explained. This thing of striking out salaries I am not in favor of. If you do it you simply establish offices without salaries, and it is inconsistent with other actions of the convention. The first term is a short one, only a few months, then there is a succeeding term of two years, and for that the legislature of the state is to provide. I do not think there is a salary named in the section that is too high. ** 620 **

Mr Burleigh –

I desire to offer an amendment to the amendment

Mr Stephens –

I move we adjourn until two oclock

Seconded and carried

The President –

The convention stands adjourned until two oclock this afternoon. ** 621 **

Afternoon Session

Convention called to order at two oclock

President Clark in the chair.

Roll call Quorum present, as follows,

	Aye.	No.
Abascal	/	
Burleigh	/	
Browne	/	
Collins	/	
Carroll	/	
Callaway	/	
Catlin	/	
Cooper	/	
Dixon	/	
Daly		
Douglass		/
Eaton	/	
Eddy	/	
Ferris	/	

Fergus	/	
Green		/
Hunt	/	
Hedges	/	
Howell	/	
Haase		
Hundley	/	
Langhorne	/	
Medhurst	/	
McCormick	/	
McSorley	/	
Merriman	/	
Mills	/	
Maloney		
McClintock	/	
Napton		
Pease	/	
Pemberton	/	
Proctor	/	
Powers	/	
Robinson		
Smith	/	
Savage	/	
Steell		
Stephens	/	
Toole	/	
Thornton		
Vivion		/
Van Gasken	/	
Waterbury	/	
Mr. President	/	** 622 **

Mr McCormick –

Mr President, after having talked with the gentleman from the Second Judicial district Capt. Mills in relation to the duties required to be performed by the Secretary of State and the labors which are necessarily entailed upon the office, I have come to the conclusion that the compensation reported in the bill is not too much. As far as I am concerned I want it understood that at all times I am in favor of paying a liberal compensation to officers provided for in the Constitution, I want that understood, but, sir, I don't want to incorporate anything in the Constitution which is objectionable to the people. I want the convention to make provision

for such compensation for officers as will meet the wishes of the people. For that reason, with the consent of my second I withdraw the amendment.

Mr Burleigh –

Mr President, at the time of the adjournment I sent to the President's desk an amendment to the amendment which I now desire to have read.

The President –

Does the second to Mr McCormick's amendment consent to its being withdrawn

Mr Collins –

I consent ** 623 **

The President –

Then the amendment, not having been acted upon is withdrawn. The amendment offered by Mr Burleigh will be read

The Secretary -

"Move to amend Section 4, by fixing the salaries of state treasurer, state auditor superintendent of public instructions at twenty five hundred dollars each

Burleigh"

Mr Burleigh –

I move the adoption of the amendment.

Seconded –

Mr Burleigh –

Mr President, I have just these few words to say in reference to the amendment. I listened very attentively this morning and without much obtrusion to the arguments as to the salaries of public officers. Now, sir, I believe that the argument made use of today by which an analogy was drawn believe the compensation received by the present Territorial officers, and those to be received by the state officers is hardly appreciable for the reason that the gentlemen who now discharge the duties of Territorial Auditor and treasurer, Superintendent of public instruction and attorney general and I ** 624 ** believe even Secretary of the Territory are all residents of the Capital, they are gentlemen who have their homes and families here, independent of their valuable possessions. They are all or nearly all engaged in other pursuits from which they derive other incomes. Now my object is this, that they should be given a good living salary, I don't believe they should be such that the officers would grow rich out of the

public moneys. No, sir, and I believe we should pay him more or less on account of the fact that one officer may have a little more of his time occupied in the discharge of the duties relating to his office than another. These men are to be elected by the people of the state to come here and reside and keep their offices at the seat of government and to give their duties, every day in the year except Sundays. And they should receive a good living compensation. I don't believe they should have salaries which would enable them to keep up establishments for the entertainment of their friends, but I believe that the public interests require that public officer should move along in a plain economical style. Now sir I believe and have express in my amendment ** 625 ** that \$2500 a year is little enough. I Hunt believes that the attorney general or secretary of state, can bring his family and come to Helena and live at a less compensation than \$2500 a year I don't know much about the cost of living here but I infer from what it cost to live in other parts of the territory, that no gentleman who may be elected to any official position, unless he happens to be a single person, can well afford to come over these mountains to the capital and devote his time to public business for a less sum than \$2500. I don't see why there should be a reason for drawing a distinction between the Secretary of State and the state Treasurer. I don't see why the Secretary should draw several hundred dollars more of salary than the Attorney General. He don't occupy in the State of Montana the position of a prime minister, There is no greater reasonability attached to his position than to other officers He don't even occupy the position of head of a cabinet, as does the Secretary of the United States, and I believe that idea of giving to the Secretary of state a slightly increased salary over those of other officers, is an idea derived from Colonial times, ** 626 ** when the secretary of state to the colonial governor occupied very much the same position as prime minister in England. I think the idea came from that. I am opposed to making any distinction in the the [sic] salaries as provided for in the Constitution. If the constitution goes into effect I am in favor of leaving the matter to the determined in the Legislature elected by the people, as they may in their discession [sic] deem to be right

The President -

The question is on the amendment

Fergus – Collins –

Ayes and noes

Mr Medhurst –

Mr President I would like to hear the amendment read

The Secretary –

Reads the amendment.

Mr Callaway –

Mr President, I ask for a division of the question

The President –

A division is called for ** 627 **

Motion lost by a viva voce vote of 18 ayes to 19 noes

Mr Eaton –

Mr President, I move the section be adopted as reported by the committee

Seconded

Mr Dixon –

Mr President, I desire to make the following amendment.

Mr Dixon –

If the President will allow me I will read it.

“Amend Section 4, by striking out the words “two terms” in line 3 and inserting in lieu thereof the word “terms.”

Also amend Section 4, by striking out the words “to take effect after the first two terms hereinbefore mentioned” and insert “but no such diminution or increase shall affect the salaries of the officers then in office during their term”

Mr McCormick –

I move the adoption of the amendment

Seconded

Mr Dixon –

Mr President, I desire to say this in behalf of the amendment It seems to me the general sense of the convention, as far as I can see –and correctly, too, I think– that the matter of salaries should be temporarily regulated. Of course, for the purpose ** 628 ** of pulling this constitution into effect it is necessary to have officers, and it is necessary to pay them. As far as I know it has been the general idea of the committee to fix the salaries only for a short time and leave it to the legislature, who may be better judges, to fix the salaries permanently as soon as the legislature can act upon the subject. Now that these salaries shall not be attracted for two terms. I cant see the reason for. I offer this amendment for the reason that as now as the constitution shall be adopted the salaries may be fixed for a short time and leave to the legislature the power to act as they may deem fit and fix the salaries as they desire. I don’t think it is a good idea to fix the salaries of the officers for two terms after the constitution goes into

effect, there may be a great change made in the offices by that time, and I think it is better to fix the salaries temporarily and leave for the legislature the power to fix them as they see proper.

Mr Toole –

Mr President, I heartily endorse what has been said by the gentleman from the 2nd judicial district, and I hope the motion will prevail. I don't think ** 629 ** it makes any difference how small the salaries of the officers are for the first term, because the term will necessarily be a short one and we can find the very best men in the Territory who will hold the office simply for the honor of having occupied it during the first term

Mr Merriman –

Mr President, I offer an amendment

The Secretary –

“Strike out the word “two” line 3 section 4 and insert the word “one” same line and section strike out letter “s” in word “terms” and in line ten same word and letter

Mr Dixon –

That is the same thing

Mr Merriman –

I withdraw it

The President -

The question is on the adoption of the amendment of the gentleman from the 2nd judicial district Mr Dixon

Motion carried

The President -

The next amendment is ** 630 ** “Amend Section 4 by striking out the words “to take effect after the first two terms hereinbefore mentioned” in line 16 and insert the words “but no such diminution or increase shall effect the salaries of the officers then in office during their term”

Mr Dixon –

The amendment is to the same effect, and leaves it to the legislature to fix the salaries permanently. The legislature will be allowed to diminish or increase the salaries of the officers, is worded not to take effect until after the first two terms, and the amendment is to strike that out. I desire to say further in regard to this salary matter that it is a matter that creates a good deal of discussion and takes up a good deal of time more than the importance of the subject

demands, and it seems to me if we leave this regulating of the salaries to the legislature now we will get rid of a good deal of discussion and a great deal of time will be saved

Amendment carried

The President –

Amendment offered by the gentleman from the second ** 631 ** judicial district.

“Amend line 2 and 3 in Section 15, General file No 8, by striking out the clause and inserting as follows

“In case of the absence or disqualification from any cause as applied to the lieutenant governor” and insert “in case of the absence or disqualification of the lieutenant governor from any cause which applies to the governor.”

Mr Power –

Move its adoption

Seconded and carried

Mr Pemberton –

Mr President, I move the report as amended be adopted and referred to the committee on engrossment

Seconded and carried

Mr McCormick –

Mr President I now move you, sir, the Convention resolve itself into the committee of the whole for the consideration of general file No 9

Seconded

Mr Eaton –

Mr President, before voting on this motion I will avail myself of the opportunity to say that after the pleasant result of last night we ought to have another night session to night, so we can be all day tomorrow fixing it up. ** 632 **

Laughter.

The President –

I would like to state to the convention a little matter which refers to this hall. I have been requested by some one in authority to ask that the hall be given up tomorrow evening on behalf

of the ladies of the society, I don't know what society, who are going to give some kind of an entertainment here.

Mr Merriman –

I move we yield this hall tomorrow evening.

Seconded and carried

The President –

The question is now on the motion to go into committee of the whole for the consideration of general file No 9

Carried

The President –

Capt. Mills will you please take the chair.

Mr Mills –

I trust the chair will excuse me I am not conversant with parliamentary rules

The President –

Mr Stephens, of Missoula will please take the chair ** 633 **

Mr Stephens –

Mr President, I offer the same excuse

The President –

Will Mr Cooper, favor the chair

Mr Cooper –

Mr Cooper is unqualified

The President –

Will Mr McCormick take the chair

Mr McCormick –

Yes sir. ** 634 **³⁶ ** 635 **

³⁶ This page is the image of a folder labeled Proceedings. 16th day, continued.

Continuation of 16th day

Chairman –

The committee will come to order. General file No 9, relative to public indebtedness. (reads)

Section 1. Neither the State, nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to or in aid of any person, company or corporation, public or private, for any amount or for any purpose whatever, or become responsible for any debt, contract, or liability of any person, company or corporation, public or private, in or out of the State.

Mr Toole –

I move its adoption.

Seconded and carried.

Chairman –

(reads)

Section 2. Neither the State, nor any county, city, town, township, or school district shall make any donation or grant to or in aid of or become a subscriber to or a shareholder in any corporation or company, or a joint owner with any person, company or corporation, public or private, in or out of the State except as to such ownership as may accrue to the State by escheat or by forfeiture, by operation or provision of law and except as to such ownership as may accrue to the State, or to any county, city, town, township or school district or to either or any of them, jointly with any person, company or corporation by forfeiture or sale of real estate for non-payment of taxes or by donation or devise for public use, or by purchase by or on behalf of any or either of them jointly with any or either them under execution in cases of fines, penalties [*sic*] or forfeiture of recognizances, breach of condition of official bonds, or of bond to secure public monies or the performance of any contract in which they or any of them may be jointly or severally inserted. ** 636 **

Mr Vivian –

I have an amendment

Chairman –

Amend by inserting “of” between the words “either” and “them” on lines 8 and 9

Seconded and carried

Chairman –

If there are no other amendments the section will be considered adopted

(read)

Section 3. The Legislative Assembly shall not in any manner create any debtor, debts, liability or liabilities which shall singly or in the aggregate with any previous debt or liability exceed the sum of One Hundred Thousand Dollars (\$100,000) except in case of war, to repel invasion or suppress insurrection, unless the same shall be authorized by law, for some single object or work, to be distinctly specified therein, which law shall provide ways and means exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within Twenty (20) years of the time of contracting thereof, and shall be irrevocable until such time as the principal and interest thereon shall be paid and discharged, but no such law shall take effect until at a general election it shall have been submitted to the people and shall have received a majority of the votes cast for and against it at such election, and all monies raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created and such law shall be published in at least one (1) newspaper in each county, if one be published therein, throughout the State for three (3) months next preceding the election in which it is submitted to the people. The Legislative Assembly may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

Mr Toole –

I would like to ask the chairman if that word “debtor” in line one should not be “debt or” the space is left out ** 637 **

Mr Collins –

Yes sir. That is an error it should be “debt or debts”

Chairman –

I have fixed it

Mr Greene –

I move the adoption of the section

Seconded and carried

Chairman –

(reads)

Section 4. No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per cent. On the value of the taxable property therein, to be ascertained by the last assessment for

State and county taxes, previous to the incurring of such indebtedness, and no county shall incur any indebtedness of liability for any single purpose to an amount exceeding \$10,000, without the assent of the majority of the voters thereof, voting at an election to be held for that purpose.

Mr Waterbury –

I move its adoption

Seconded and carried.

Chairman –

(reads)

Section 5. No city, town, township or school district, shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregated exceeding three (3) per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness.

Timothy E. Collins, Chairman.

Mr Waterbury –

I move its adoption

Seconded & carried.

Mr Hunt –

Mr Chairman, I move the committee now rise, and report general file No 9 back to the Convention ** 638 ** with the recommendation that it be adopted

Seconded and carried.

Chairman –

The President will please take the chair.

At 2:45 Convention called to order

President Clark in the chair

Mr McCormick –

Mr President I am instructed by the committee of the whole to report back general file No 9 and recommend with the amendments of the committee it do pass, and I desire further time to make out my report

The President –

If there is no objection the time will be granted

Mr Langhorne –

Mr President, I move the convention go into committee of the whole on general file No 11

Mr Burleigh –

I move to amend by including 11, 12 and 13

Mr Langhorne –

I accept the amendment ** 639 **

Seconded and carried

The President –

Will Mr Power take the chair

Mr Power –

Mr President, excuse me please

The President –

Will Mr Burleigh please take the chair

Chairman –

The committee will please come to order. General file No 11, relative to officers. (reads)

Section 1. No executive, legislative, judicial, ministerial, or other officer of this State, or of any legal sub-division, district, county or municipality thereof, shall, during his term of office, accept, receive, take the benefit of, or use any gratuity or pass issued by any railroad corporation, or any agent, officer or employe [*sic*] thereof, or of any department thereof, or issued by any agent, officer or employe [*sic*] of any other common carrier operated within this State, under the penalty of forfeiture of office and all the emoluments thereof.

Mr Clark –

Mr Chairman, I do not see, Mr Callaway, chairman of the committee reporting this file, in the convention therefore, I move general file No 11 be passed for the present and we take up general file No 12 –

Seconded and carried.

Chairman –

General file No 12, Section 1. There shall be no distinction in citizenship on account of sex.

Stephens
Chairman

Mr Collins –

I would ask if a woman isn't a citizen as well as a man under the laws of the united States.

Mr Pemberton –

I offer an amendment.

Chairman –

Mr Pemberton offers the ** 640 ** following – Amend section 1 by substituting "There shall be no distinction in sec on account of citizenship."

Laughter

Mr Pemberton –

I think that will answer just as well as the other

Mr Toole –

I would like to hear what the gentleman from Missoula has to say on the proposition.

Mr Stephens –

Mr Chairman, I have a standing bet with a gentleman, of the cigars, that I don't say a word in the convention this afternoon. (Laughter) I don't want to lose any cigars, this is simply a matter of explanation. When the members of the house or any gentleman calls on me it is necessary for me to say something. I made the proposition to bet and he took me up on it. I don't know how, in good Heaven's name, I got my name attached to that report as chairman (Laughter)

Mr Toole –

I would suggest that the decisions of the Supreme Court say such a bet cannot be recovered (Laughter)

Mr Stephens –

I thank the gentleman but ** 641 ** I have said all I am going to say on the proposition

Chairman –

What is your pleasure gentlemen concerning the report

Mr Proctor –

Mr Chairman, I don't see the necessity for the section at all, and I move when the committee rise they report back General file No 12, with the recommendation that it be not adopted

Seconded and carried

Chairman –

I see the gentleman from Madison is here and we will take up general file No 11 –

Section 1. No executive, legislative, judicial, ministerial, or other officer of this State, or of any legal sub-division, district, county or municipality thereof, shall, during his term of office, accept, receive, take the benefit of, or use any gratuity or pass issued by any railroad corporation, or any agent, officer or employe [*sic*] thereof, or of any department thereof, or issued by any agent, officer or employe [*sic*] of any other common carrier operated within this State, under the penalty of forfeiture of office and all the emoluments thereof.

Mr Langhorne –

I move the section be stricken out.

Seconded.

Mr Callaway –

Mr Chairman, with the kind indulgence of the committee, I beg at least to have the privilege of correcting this record, if such it be. I think ** 642 ** I heard the gentleman from Missoula say something about this matter getting in at the wrong place. This is a resolution offered by me sometime ago, and I am satisfied now from the feeling of the convention, that a majority of them are opposed to the adoption of the resolution or incorporating in the constitution a provision like this. I, however, believe it to be right, and would like to see the principle as herein contained incorporated as a principle of our fundamental law. But knowing that I can bring the matter up again. I do not care to press it at this time, except to say this, that it seems to me when the gentlemen consider the idea as incorporated in here, the provision should form a part of our organic act. Now, Mr Chairman and gentlemen of the committee, I would like in all conscientiousness, in all fairness and decency, to place the legislature of Montana above reproach. You, sir, and you gentlemen, have heard many times those things said against legislatures – of their influence by ** 643 ** corporations, of their influence by lobbies, of their influence by gentlemen who leave certain axes to grind – things that are not certainly decent or dignified. The legislature of Montana, that we say is incorruptible, should not be placed in the situation to tempt corruption. I now desire to say a word in reply to my friend from Silver Bow, that this is not intended in any sense of the word to impugn the character of the legislature or

any gentleman upon this floor. I disclaim any idea of that kind. But I do say, sir, that I desire to place in this constitution a proposition to eliminate, to separate, from any possible speech, rumor or street talk that may be had, anything that would cast a reflection upon our legislature, or that any gentleman of the legislature has been influenced by improper motives. That sir, is a principle of education. And when the gentleman from Silver Bow says that it is an insult to the people of Montana, to the legislature, to say that anything of this kind should be incorporated in the constitution, I say ** 644 ** this, that while he may be – I hope I may not be – a member of the legislature, yet sir, I do ask this proposition to go in, for the reason, that the legislature of Montana, or any state whatever should be so far removed from all influences of corporations, so far removed from everything that may be said against its dignity & character, and when they shall have come together, performed their labors and separated, that no citizen or no gentleman shall have reason to say, “the lobby was there and that was done.” The gentleman further says that this is a proper subject for legislation. Perhaps it is. But I want to remove this question from the control, and beyond the power of the legislature. Put it in our fundamental law; in our organic act. So that the question can never arise in the legislature. There are many gentlemen upon this floor who have had experience in legislatures. They know wherein legislatures have been importuned to prevent the passage of wholesome and necessary laws. They know wherein they have been influence ** 645 ** to prevent the passage of such laws. And for that reason I believe this principle is correct. Although gentlemen may come here today with passes in their pockets, riding free upon the railroad and collecting their mileage from the Territory, yet they know the principle is wrong. It is wrong in principle and does not comport with the dignity or character of legislatures of course, if he be a member of a corporation, if he be as my friend here Capt. Howell is, a superintendent of a stage company; if he be an officer of a railroad, he rides without any particular reason to give him the privilege. That is a matter of right. Mr Chairman, I ask that this may go in the Constitution, as a proposition asserting a principle by which we propose to remove from beyond all chance of influence, the overshadowing corporations that are here now and will come into the state of Montana. The gentleman from Silver Bow, who talks perhaps more eloquently than most any member on the floor, said that he could not be brought for a pass. I do not believe that he could ** 646 ** I do not believe any member of this convention could be bought by a pass. I have no reason to assert that any legislature could be bought for a pass. The proposition goes further than that and says a gratuity, which is an expression the gentlemen well understand may mean more than a pass. I want to insert in this constitution to be adopted by the people of Montana Territory, the principle that that there shall be no connection between the government and corporations. Our fathers an hundred years ago worked and legislated to put a provision in the Constitution of the United States separating church and state. And why, gentlemen of the convention did they seek to separate the church from the state? Because of its influences upon the state. You know that, as you have observed the history of the legislatures of the country. You know, sir, as you sir in that chair there, today of the influences of thee corporations upon bodies politic. Therefore I want these things separated here. I want the governor or tribunals of the Territory to travel as other gentlemen ** 647 ** travel, and pay their way. From the governor down to the lowest officer in the Territory. Mr Chairman, let me say one word more, and this I don’t

intend in any offensive sense, but it is a fact. Some time ago, not long gone by, there was a trial in the county of Gallatin. The Northern Pacific railroad was upon one side. A poor crippled man, tottering as he was by reason of honorable scars received in the war, unable to take care of himself, was upon the other. I state now, and I take no words back, that the Northern Pacific railroad sent witnesses there for the purpose of testifying against that man. The other witnesses who came upon the other side had to pay their own passage. That is a very small matter, but it is an illustration of the influences that may be exerted. The gentlemen speak of the dignity of the officers of the state of Montana. I want to see them so placed, so dignified in the constitution, so that no citizen can say "There is Governor Jones, Secretary Smith or any other officer, because he is an officer, riding upon a railroad ** 648 ** pass, and is therefore, to some extent, influenced, in spite of himself, by the corporation who are dissembling to him and robbing me and my children. ** 649 **

Mr Toole –

Mr Chairman:

The zeal and energy with which the gentleman from Madison defends his resolution is certainly commendable, but sir it seems to me that this is neither the time nor place to consider the merits of the proposition contained in the resolution. It is a species of legislation. It is in the nature of a final statute. It affixes punishments and creates forfeitures. An officer who shall accept a pass, however honorable his life has been by this simple act, is made to incur the greatest responsibilities. If some such inhibitions as are contemplated by the resolution are proper at all the place for them is in the criminal code and not in the Constitution.

In the framing of organic law some little confidence ought to be entertained in the ** 650 ** public's servants.

The ordinary presumptions of honesty and integrity at least ought to obtain, It seems to have in revolutionizing principle sir it so far as this question of presumption is concerned.

In some respects this is an age of mourning – And I am not wholly surprised that this presumption of honesty so long revered should now be sought to be overthrown.

It is asserted by some that fell never lived. That honor was a myth – that the fathers of his Country, when enraged swam like the army in Flanders – Bentham and Locke and others have declared that it was not the province of Legislatures to make but to unmake or repeal laws – ** 651 ** So long as the frame of government is reserved to the people and their virtue and intelligence is maintained keep such shameful threats as are embraced in this resolution out of the Constitution

It is a thing of modern invention and not justified by the exigencies of the times.

It manifests a lack of confidence in the virtue and honesty of one in all people. That is hardly in keeping with the representations we make when we apply for admission as a state –

What will Congress say when a committee from this convention goes down to Washington to present our climax for admission and exhibits this constitution, with such a perversion, as the charter of our political existence. ** 652 ** I have some fears lest they should say go back to your people, tell them to don again their swaddling clothes, to cease their clamor for statehood – Learn to have enough confidence in their people to trust such matters as these to legislative action. The people are not wholly corrupted – the Legislature has acted upon a similar subject, and it is fair to presume that it would do so again! I refer the gentlemen to Sec 103-F 375 Ty the revised Statute of Montana “If any person or persons should directly or indirectly give any sum of money or any other bribe, present or reward or any promise contract or obligation or security for the payment or delivery any money, present, reward, or any other thing to obtain or procure the opinion, judgment or decree of any judge or justice of the peace, acting within this territory, or to corrupt, induce, or influence such judge or justice of the peace to be more favorable to one side than the other, in any suit, matter, or cause pending or to be ** 653 ** brought before him or them; or shall directly or indirectly give any sum of money, present, or reward, or any promise, contract, obligation, or security for the payment or delivery of any money, present, or reward, or any other thing, to obtain, procure, or influence any member of the legislative assembly, or to incline, induce, or influence any such member of the legislative assembly to be more favorable to one side than the other on any question, election, matter, or thing pending to be brought before the legislature, or either house thereof, the person so giving any money, bribe, present, or reward, promise, contract, obligation or security, with intent, and for the purpose aforesaid, and the judge, justice of the peace, or member of the legislative assembly who shall accept or receive the same, shall be deemed guilty of bribery, and, on conviction, shall be punished by imprisonment in the territorial prison for a term not less than one year, and shall be disqualified from holding any office of honor, trust, or profit in this territory.” Here sir, in the laws of the Territory is the place to insert a provision of this kind. But let us go a little further and see what the next section provides. “Section 104 If any person ** 654 ** shall, directly or indirectly, give any sum of money, or any other bribe, present, or reward, or any promise, contract, or security for the payment of any money, present or reward, or any other thing, to any judge, justice of the peace, sheriff, coroner, clerk, constable, jailer, attorney general, district or county attorney, member of the legislative assembly, or other officer, ministerial or judicial, or assessor (but such fees as are allowed by law), the person so giving and the officer so receiving any money, bribe, present, reward, promise, contract, obligation, or security, shall be deemed guilty of bribery, and, on conviction thereof, shall be punished by imprisonment in the territorial prison for a term not less than one year, not more than ten years, and shall be disqualified from holding any office of honor, trust, or profit in this territory.” Upon that, sir, some little confidence may be placed in the legislative assembly of the state of Montana, when it convenes. And I undertake to say the provision is as strict and stringent in character as any ** 655 ** that have ever been enacted.

I protest against making a criminal code out of the Constitution –

If justice sentiment is so strong as has waged upon this subject – there is no cause for alarm in leaving this subject where it properly belongs, for legislative action. ** 656 **³⁷

Applause.

Mr Clark –

Mr Chairman, I do not propose to take up much of the time of the committee by making any great argument, but I want to say a word or two. I hope this resolution now before the committee will not prevail. I am in favor of the section as presented by the gentleman from Madison with the report of the Committee on the subject. I am in favor of the section as presented by the gentleman from Madison with the report of the Committee on the subject. I am in favor of incorporating that article in the constitution. Now, sir, the gentleman from Lewis and Clarke talks about the intelligence and virtue and honesty of the people of Montana; and it has been suggested by another gentleman who spoke upon the subject some days ago, that it would be a libel on the intelligence of the people to place such an article as this in the constitution of the state. I will ask why is it necessary for the Territory of Montana to incorporate in its laws such provision as has been read by the gentleman from Lewis and Clarke? If there is no necessity for placing such a thing as this in the constitution, why has the legislature of Montana found it necessary to place it in our laws? If it is necessary in ** 657 ** one case it is necessary in the other. And for my part I would like to see it incorporated in the Constitution and become a part of the fundamental law of the state. The gentlemen say that a pass will not affect an officer in his actions or a judge in his judgment. This all may be true in some instance but I take it from the fact that the passes are granted, that the corporations who grant them are better judges of human nature than the members of this convention. There is some purpose to be gained by the granting of these passes. Corporations are said to be soulless bodies, and I believe they are. Whenever they give away a pass they certainly expect to get value received for it. Notwithstanding the statutes which rest upon the statute books of Montana today, there are people who do hold offices of honor and trust in the Territory who travel on the railroads and stage coaches with passes. Now, sir, it is said we have no precedents in this matter. I say to you, Mr Chairman, that we have precedents, since 1809, but that precedent is not upon the ** 658 ** statute books of any Territory or in the Constitution of any state that I know of, but we find it laid down in the Constitution of the United States in an amendment made at the Eleventh Congress, second session 1809. I am in favor of the article and hope the motion to strike out will not prevail.

Mr Toole –

The gentleman from Silver Bow, Mr Clark, says if the subject of the resolution is necessary in the laws of the Territory he would like to know why it isn't necessary in the Constitution. I will answer the gentleman and say it should not be there because there is a criminal act in every state and Territory in the Union. There is the place for all matters pertaining to the criminal

³⁷ "10 to 15 sent to Toole" scribbled at the top of the page. This is the entirety of Toole's speech.

laws. Now, he asks why it should not be embodied in the Constitution. I ask him in return why there should not be embodied in the Constitution provisions against murder, rape, robbery, manslaughter &c, and any one convicted of a crime should suffer the penalty. Because, sir, it is not the place for it. If you are going to make crime punishable ** 659 ** in the Constitution, let us go a little further and make an entire and complete act of criminal procedure

Mr Pemberton –

Mr Chairman, I don't propose to make a speech, I said what I had to say, the other day, on this question and I repeat it now. I would like, however, to refer to what the gentleman from Silver Bow says in relation to his precedent. This section, Mr Chairman, that we propose to incorporate in the Constitution refers to the officers of the State of Montana. All officers, the section of the Constitution which the gentleman referred to, do not relate to the officers of the United States government or any government on the American Continent. It relates to all citizens. Why not make this section so if you want to shake out corporation influence? Why not make it read "any citizen of the state of Montana who shall accept a pass, shall be hung, drawn and quartered? Then it will be on all fours with the section the gentleman refers to in the Constitution of the United States. I desire to say to my good meaning friend from Madison ** 660 ** that I don't think it was in his heart to intend any sort of reflection on the honesty of the people of Montana. The gentleman I know is the soul of gallantry, and a chivalric representative of the great law abiding county of Madison. He stands here the Apollo Belvidere of the Convention (Laughter). I know he would disdain to cause the slightest reflection upon the people of Montana. He knows, sir, from long association with these people, that they are pure in their intentions as the winds that sweep over these valleys. He knows they are as firm in their devotion to the government, as these everlasting hills, and he knows they can't be corrupted. I repeat, sir, that to insert that section in the Constitution of the State of Montana perpetuates for all time to come a libel upon this and all future generation of the people of Montana. It is a slander, a withering libel that should not find a place in the Constitution of this county. If a time shall ever come in the history of this people, when the legislature shall deem it necessary to enact such ** 661 ** a law, God knows there is nothing in their way. If a time shall ever come in the history of Montana legislatures when these corporations shall draw themselves like serpents around the law making power of the land and corrupt and disgrace it, then the people will rise in their majesty as they always do when the emergency exists and elect to the legislature of the state, representatives and law makers who have the patriotism and courage to enact such laws as we need. But in God's name put no such libel in the fundamental law of the land. Suppose an Englishman or some intelligent gentleman from a foreign land comes to this country and picks up your constitution. What would he say? Is it possible that the people of any country have become so generally corrupt and demoralized that the Constitution of their country must tie up the representative power to a stump with this sort of constitutional lariat? Wouldn't he come to that conviction? Wouldn't he come to the conclusion that corruption and degradation and immorality rule paramount in the ** 662 ** land? He couldn't come to any other conclusion. I repeat it today, that this sort of legislation comes from a disposition to pander to

this false opinion or idea prevalent in the land, that the public men , all of the public men of the land to day are corrupt. I don't believe it. I believe the people of the land to day are as intelligent as the people who have preceded us. I believe they are as determined to preserve our institution. And our institutions cant be preserved by such sections in the constitution as this. They can no more be preserved by this sort of legislation than they can be by force; by the bayonet, they cant be mastered by any such means. When these people become so corrupt – when they lose their intelligence and virtue – when they need such legislation as this to protect their virtue and patriotism – then patriotism no longer dwells within the government and it falls of its own weight. It topples and falls as all governments in this world have doing and goes down by means of its corruption. ** 663 ** That is the only danger of the American form of government. I see no necessity on account of corruption existing amongst our people to hedge them in with any provision of this kind. I believe it is an insult as I believe my name is Pemberton; that it is a libel and blasphemy on the people of our country. It is asserting on a wild venture, that every man in the land is corrupt. It is all wrong. Why not say every man in the land, private citizen, or what not, who shall accept a pass from any corporation, steam boat, railroad, stage coach, or anything else, hall lose his citizenship, shall be annihilated. That's the way to do it. Make a clean sweep of it. Suppose you want to go down the river, and you don't want to go on a railroad. You might strike a steam boat. They might think enough of you to make you their guest and take you down the river a little ways. Are you going to make a man riding on a pass on a railroad a villain, and outlaw a man for riding in a canoe? ** 664 ** Outlaw a man for riding on Gilmore and Salisbury's stages? Go the whole hog on it. That's the democratic rule

Mr Eaton –

Mr Chairman, I am in favor of incorporating this section in the Constitution. And I would say in answer to the gentleman from Silver Bow, who some days ago said he would like to see the man who could be influenced by a railroad pass, Mr. Chairman, I guess I am that man. That is to say I would acknowledge an obligation. I allow no man to put me under any kind of a favor unless I expect to return that favor. I do not mean to say my vote could be bought out and out by a railroad pass, but when I accept a pass from a railroad company, I am, to some extent under an obligation to that company and to be honest to myself I must favor that company. If that is dishonorable let it be so, it is so in any case. Let me go on the –

Applause

Mr Clark –

I simply wish to state that the remarks of the gentleman who preceded ** 665 ** me, in regard to the positions taken by the gentlemen who defend this measure that they are pandering to a false sentiment, I say it is hardly just. I can, sir, with the same propriety charge the gentlemen who oppose this measure of roistering in the interests of the great corporations of Montana. Now, sir, with regard to his statement, that the section in the Constitution of the United States, on which he claims it only refers

to citizens of the United States. I say they must be citizens before they can become officers. It is laid upon a broader foundation, it includes all citizens of the United States. It is a broader and more comprehensive proposition than we ask to be put into the constitution of the State of Montana, and the gentlemen who have sat in the Congress of the United States, have seen this clause there for almost a century of years and have not seen fit to change it, and it is there today. No citizen of the United States shall receive any bribe gift or present. Why? Because of the influence it may have upon citizens who may be returned as ** 666 **