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BUDGET MAKING AND EXPENDITURE CONTROL  
IN THE  
STATE FINANCIAL SYSTEM OF MONTANA

by

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B. A. Carleton College, Northfield, Minnesota  
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requirement for the degree of  
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1943

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**PART I**

**Historic and Organic Basis of Montana's  
Financial System**



## CHAPTER I

HIGHLIGHTS OF MONTANA STATE'S FINANCIAL SYSTEM  
FOUND IN MONTANA TERRITORIAL GOVERNMENT

## 1. Introductory Comment.

Many of the men who contributed to the foundation of Montana's early governmental system were not directly concerned with such activity from a professional statesman's point of view. Rather, it is apparent, they were fortune seekers and, as such, they were more interested in the development of new land and the exploitation of natural resources for personal gain.<sup>1</sup> In those pursuits, they wanted to be as free and unhampered as possible, but complete freedom did not offer ample security; they wanted assurance that what they developed they could maintain, what gold they found they could hold.

Thus arose the need among settlers of the West—as it had arisen among all of their ancestors before them—rules, regulations and penalties whereby their intercourse with one another would be subject to certain standards; whereby they would be reasonably free from murder and robbery, guaranteed the "rights" of their personal

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<sup>1</sup> This is a "natural" situation from the principles of both psychology ("basic appetite") and economics. "In new countries, people naturally undertake those occupations and industries that produce the greatest net return, and less advantageous industries are developed gradually." Roland E. Renne, Land Economics (New York, 1947) p. 170.

property holdings and have a reasonable assurance of some kind of justice in their disputes. To conduct such a service, government was established. Government did not come to the Territory of Montana as a divine creation or even as a gift of inspired men, but from the strong-willed individuals who were determined to find an easier life and for whom setting up a government was one of the steps in "meeting the needs of their daily lives through affecting readjustment."

History shows that men of Montana had greater difficulty in subordinating the forces of "greed" in their personal makeup to the essential of "share" than did men of some other communities. Nevertheless they established government as an agent of control and out of and in spite of wild sessions it grew. The growth has continued until in our own day government is considerably more than a legislative assembly which makes laws and a county sheriff who enforces rules of the game. Government is no longer just a means which men suffer but, for many, it is an end in itself.

## 2. Fiscal Provisions of the Organic Act of the Territory.

The Organic Act of the Territory of Montana<sup>2</sup> was a very brief document: it left much to be implied. It provided in limited detail the main executive, legislative and judicial branches, but the laws and administrative routine under which they were to operate were to

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<sup>2</sup> 13 Stat. 85.

be drawn up by the Territorial assembly subject to the approval of Congress.

Only brief mention was made in that act of finances. Accordingly, two funds were to be appropriated annually by Congress. One of these was to be expended by the governor of the Territory "to defray contingent expenses of the Territory" including the salary of a clerk in the executive department. The other sum was to be appropriated on the estimate of the Treasurer of the United States and was to be expended by the secretary of the Territory in payment of expenses of the legislative assembly, the printing of laws "and other incidental expenses."

Both the secretary and the governor were responsible to the Secretary of the Treasury of the United States for their use of the federal money, being required to account to him semi-annually for their expenditures. The money in these two funds could not be appropriated by the Territorial assembly for purposes or amounts unauthorized by Congress. Salaries of the governor, secretary, supreme court judges, members of the assembly and attendants were to be paid from federal funds. Other civil officers were to be paid according to Territorial law from Territorial funds. No stipulations were made concerning the administration of taxation or the handling of public money other than the general one that all laws were to conform to

the Constitution of the United States.<sup>3</sup> Further developments were contingent upon the wills of local lawmakers.

### 3. Fiscal System Provided by Early Legislation.

The first legislative session of the Territory which convened in 1864 passed an act "creating certain Offices in the Territory of Montana,"<sup>4</sup> and, among these, there was to be a treasurer and "One Territorial auditor, who shall be ex officio librarian." Both were to be elected by the legislative assembly by joint ballot, commissioned by the governor to serve for a term of one year and until their successors should be elected and qualified.<sup>5</sup>

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<sup>3</sup> "...the legislative power of the Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act." Ibid., p. 88.

<sup>4</sup> Laws of the Territory of Montana, First Legislative Assembly, p. 533.

<sup>5</sup> It was ultimately held by Governor James W. Ashley in 1869 that this section of the law violated the language and intention of the Organic Act. He demonstrated that by that Act "The Governor shall nominate, and by and with the advice and consent of the Legislative Council appoint all officers not herein otherwise provided for." The Supreme Court of the Territory upheld the Governor's interpretation and thenceforth the offices were filled by appointment. Subsequent legislation was modified accordingly. See the Governor's Message, Delivered to the Two Houses of the Montana Legislative Assembly at Virginia City, Saturday, December 11, 1869 (Helena, 1869) p. 4. Also the Revised Statutes of the Territory of Montana, 7th Session (1871-1872) p. 545.

### a. Territorial Auditor.

By another act of the same session the duties of the auditor and treasurer were defined.<sup>6</sup> The auditor was directed to issue warrants drawn upon the Territorial treasury in favor of all persons whom the assembly might indicate, and was to keep a record of all accounts presented to him and for which warrants had been issued. Section four of that act was particularly important viewed in consideration of developments in public budgeting which operate today. In speaking of the auditor's duties it provided that:

He shall prepare and report to the legislative assembly at the commencement of each regular session a full and detailed account of the condition of the revenue, and expenditures, of the preceding year, with estimates for the amount of revenue and expenditures for the succeeding year, together with such plans as a careful examination may suggest for the support of the public credit, for promoting frugality and economy in the expenditures, and generally for the more perfect understanding of the fiscal affairs of the Territory; show the amount of appropriations made by law, and the amount paid under the same; show the amount of revenue chargeable to each county, and the aggregate of each object of taxation.

This section is significant because it contains several of the basic features of later budgetary systems. It provides for: (1) a statement of the financial situation of the Territory; (2) estimated expenditures and, (3) estimated revenue for the forthcoming year with (4) suggestions for legislative action to support the public credit and improve the efficiency of government. No standards were

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<sup>6</sup> Laws of the Territory of Montana, First Legislative Assembly, p. 452.

set forth however providing for the form or detail of such a report. Consequently the functions were carried out in varying degrees by officials who followed.

In addition, certain other duties largely of routine nature were imposed on the auditor. He was to keep his office at the seat of the government, and furnish the tax collectors of the counties with blank receipts and licenses. Finally, he was to "direct prosecution in the name of the Territory for all delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who become possessed of public money or property and fail to pay over the same, and against all debtors of the Territory."

In toto these represent fairly wide administrative powers and responsibilities the scope of which is of greater significance than the functions of the treasurer.

b. Territorial Treasurer.

The treasurer, by the same law, was made simply a custodian of funds. He was to receive all money belonging to the Territory taken up by the collectors and then was to disburse it upon warrants issued by the auditor and "not otherwise." True accounts of these dealings were to be kept and were to be presented quarterly or oftener if necessary to the auditor for settlement. A report of the condition of the treasury and its operations of the preceding year was to be made to the legislative assembly at the commencement of each regular session.

Certain duties and privileges were outlined in the act for the auditor and the treasurer to share. Each was to have free access to the other's office for the inspection of all books, papers and accounts; and similarly to all of the other offices of the Territory for the inspection of such papers as might concern their duties. Provision was made for their salaries—seven hundred dollars annually with the auditor receiving a certain percentage on all the warrants which he issued.<sup>7</sup> Finally, they were authorized to administer oaths or affirmations and compel the attendance of witnesses in matters involving the duties of their offices. The act was approved and became effective on February 8, 1865. This law, then, created the offices of the auditor and the treasurer and set forth their fundamental duties. Additional functions are to be found in other laws of the session dealing primarily with other establishments, but designating these officers as administrators of various routine functions. Some of these are only of historic interest<sup>8</sup> while others may have contributed to the development of the subject offices.

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<sup>7</sup> By the laws of the 2nd Legislative Session of the Territory of Montana the auditor was to receive 5% on all warrants issued by him on the first \$25,000 and 3% on additional amounts. Laws of the Territory of Montana, 2nd Legislative Assembly, Chapter XIV, Sec. 13, p. 20. The salary of the auditor and treasurer was increased several times before Montana became a state and the percentage payment to the former was dropped in 1870 following a recommendation of Auditor Roberts.

<sup>8</sup> One such law entitled "An Act concerning weights and measures," made it the duty of the Treasurer to procure "as soon as possible" necessary weights and measures for the use of the Territory. Laws of the Territory of Montana, First Legislative Assembly, p. 387.

In an act to provide for the expenses of Montana Territory passed by the first legislative session the procedure to be followed by the auditor and treasurer in the issuance and payment of warrants was set forth along with the printed form which the warrants were to follow.<sup>9</sup> Section seven of this act set forth an element of control to be exercised by the auditor and constituted an expansion of the section of the act setting up his office previously quoted in which he was required to make a report to the assembly at the opening of its session. According to this section of legislation the auditor was required to:

...make an estimate of the probable amount of revenue derivable from the various sources, and report the same to the legislative assembly of the Territory, by which they may be governed in their appropriations, and that every warrant shall be cancelled or paid in its own fiscal year out of the sums in the hands of the treasurer, and that no warrants shall be issued over and above the estimate of said auditor, duly reported to the legislative assembly.

Beyond the particular requirements enumerated previously—that the auditor was to report an estimate of revenue for the forthcoming year—this law stated that no warrant might be issued by that officer which would cause expenditure above the sum of income estimated by him. Thus he had the primary responsibility—a budgetary function—of estimating income, and a secondary or "control" responsibility of holding warrant issues to his own estimated figure.

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<sup>9</sup> Ibid., p. 329.



To insure the honesty of the auditor, treasurer and various other civil officers, or at least to remove a possible encouragement to dishonesty, another act was passed whereby they were forbidden to deal in certain governmental securities and providing for the procedure against them in case such provisions were not adhered to.<sup>10</sup>

c. Legislative Consideration of Finances.

The principal question facing the new government was one of collection of taxes. Taxation policy was the concern of the legislative assembly which determined the objects and rates of taxation. While the auditor was made responsible to the legislative assembly for estimating the expenditures and revenue of the forthcoming fiscal period, his means of making such estimates were limited and unscientific and they were merely recommendations to the legislature which might or might not be followed. Neither budgeting nor expenditure control had been isolated and defined in the realm of American public finance as something to be sought and developed scientifically. Consequently Montana Territorial government finance wavered about subject to the efforts of legislators and officials to tax adequately, hold the funds collected securely, and spend as frugally as necessity permitted. There was no standard of necessity.

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<sup>10</sup> Laws of the Territory of Montana, 2nd Legislative Assembly,  
Chapter XIV, p. 18.

Early Montana politics were scarcely famous for orderly procedure; disorder was the word and rough and tumble the spirit. This was as true in financial affairs as in other spheres of policy determination. As in Congress, revenue and expenditure—particularly the latter—was considered by a variety of committees<sup>11</sup> in the assembly and throughout the session's meeting period. With the beginning of each session the governor addressed the lawmakers and, in every message delivered, the executive made reference to financial measures. Such statements varied from the mere mention of taxation urging equality<sup>12</sup> to rather detailed summaries of the financial status of the Territory with specific measures suggested for improving existing conditions.<sup>13</sup> The finance sections of the governor's messages dealt almost exclusively with taxation or the public debt.

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<sup>11</sup> The following Standing Committees were set up by the Council of the First Legislative Assembly of the Territory of Montana: Ways and Means, Judiciary, Internal Improvements, Public Lands, Federal Relations, Education, Towns and Counties, Military Affairs, Incorporations, Agriculture and Manufactures, Elections, Indian Affairs, Mines and Minerals, Engrossment and Enrollment, Enrollment. Council Journal of the First Legislative Assembly of Montana Territory (Virginia City, 1866) p. 10. Note that no appropriations committee was included. Each committee looked after the appropriations regarding its own activities.

<sup>12</sup> The Governor's Message to the Legislative Assembly of the Territory of Montana (Virginia City, 1864).

<sup>13</sup> Message of Hon. Green Clay Smith, Governor of Montana, to the Fourth Legislative Assembly, at Virginia City, M.T., Nov. 4th, 1867.

At the beginning of each session the reports of the auditor and treasurer were received by the Assembly. Statements of the treasurer were for the most part routine recapitulations of money received, money on hand in various funds, the extent of the public debt and a list of warrants paid.

In addition to routine listing of warrants issued, a statement of funds on hand, notation of the public debt with a comparison to that of the previous year, the report of the auditor usually included a message in which he made specific recommendations concerning the rate of taxation, disposition of the public debt, proposals of legislation for the improvement of tax collection or minor changes affecting the efficiency of his own office, such as the termination of the fiscal year, and in some cases legislation which would improve some other government activity and thus minimize expense. No such recommendations made by the Territorial auditor found in this study were of a general nature seeking to greatly alter the financial system. Rather, they were proposals meeting some particular problem confronting the day to day activities of financial administration and such recommendations amounted merely to steps in the evolution of State government finances—another indication that the Territorial government developed through individuals' meeting the needs of daily problems rather than expanding government on a theoretical basis.<sup>14</sup>

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<sup>14</sup> Specific examples of such proposals are notable: "...Great neglect is observable on the part of the collectors of some of the

counties, resulting in the whole burden of taxation resting on the shoulders of one portion of the population, while the remainder go scot free. The neglect is, perhaps, attributable more to the want of a knowledge of the law, than to any other cause....I would therefore recommend to your consideration the compilation, by some competent person, of all the laws relating to the duties of county officers... to be published in pamphlet form, and distributed to each officer of the several counties." Statement of John S. Lott in Report of the Auditor of the Territory of Montana To His Excellency, Thomas Francis Leach, Secretary and Acting Governor of the Territory of Montana (Virginia City, 1866). A statement of W. H. Rogers made two years later shows something of the freedom which the Territorial Auditor had in conducting his office and requesting legislation: "By a special act, approved December 21st, 1867, I was authorized to purchase a safe for the Auditor and Treasurer's Office, and the sum of five hundred dollars was appropriated for that purpose. The only safe that I could find suitable belonged to John Howe, which I purchased for eight hundred dollars, leaving a balance due thereon of three hundred dollars, for which I ask an additional appropriation." Report of the Auditor, Treasurer, and Superintendent Public Instruction, Montana Territory (Virginia City, 1869). Suggested reform of the Auditor's office was suggested by Rogers in 1869: "...I would further recommend that there be a fixed salary allowed to the Territorial Auditor instead of a percentage on issues of Territorial warrants, as is now the law. The reason should be obvious to the Legislature: It is to remove temptation from the officer to increase his compensation..." Annual Reports of the Auditor and Treasurer of Montana Territory, for the Fiscal Year 1869 (Virginia City, 1869). A recommendation looking to reform in another section of state government with consequent financial saving for the Territory was made in 1874 by the Auditor: "I recommend that the Act approved May 6th, 1873, entitled 'An Act to Govern and Regulate the Penitentiary at Deer Lodge City, Montana Territory,' be repealed, and that, in lieu thereof, the Legislature provide for the letting, to the lowest and best bidder, of the possession and government of the Penitentiary, and the care and maintenance of the convicts confined therein....The necessity for this amendment arises from the fact that I have had no official knowledge of the receipts and disbursements of convict earnings. I believe that...(if) the method herein indicated (were) adopted, it would be a saving to the Territory, at the present time, of at least \$5,000, each year." W. H. Rogers in Report of the Auditor and Treasurer of Montana Territory, for the Ninth Fiscal Year of 1873, Made to the 6th Session of the Legislative Assembly of Montana Territory (Virginia City, 1874). Finally, mention was several times made in the Auditor's reports recommending a change in the dates of the fiscal year. "I desire also, to suggest a change in the several laws regulating the fiscal year....The fiscal year for all Territorial purposes should begin January 1st..." Solomon Star in the Annual Report of the Auditor and Treasurer to the Legislature of Montana, for the Fiscal Year 1875 (Helena, 1876).

After these messages had been delivered the assembly was on its own, free to take up the suggestions offered using them as the core of legislative acts; or at liberty to disregard the opinions of the administrators and make or, more important at times, refrain from making rules according to their own whims and the pressure exerted upon them by various lobbies and interest groups. Though bad from the administrative point of view, this situation was not unique, for it was in general the same procedure followed in the federal government.

#### 4. Efficiency of the System.

Territorial government did, of course, survive and it grew until statehood was achieved in 1889. However, in its first years, the Territory of Montana had serious difficulties financially.

The rough and ready manner in which the infant Territory was raised, the liberality of her guardians in appropriating funds, and the ten thousand demands for moneys to be expended in public improvements, rendered the road to the treasury a great thoroughfare, and urged an expenditure far beyond the sum which the economist would countenance in an older commonwealth.<sup>15</sup>

At the close of 1868 the Territorial debt was \$104,033.90.<sup>16</sup> For nearly twenty years the Assembly struggled with a fluctuating debt figure. At times it was led and prodded by an able governor or a

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<sup>15</sup> Michael A. Leeson, History of Montana 1739-1835 (Chicago, 1835), p. 446.

<sup>16</sup> Montana, Report of the Auditor, Treasurer, and Superintendent Public Instruction, Montana Territory (Virginia City, 1868).

conscientious auditor particularly in the early 60's but, during much of the time, its members followed their own judgment. By 1883, however, the treasurer could finally report:

The most gratifying feature of the territorial finances for 1882 is the virtual extinguishment of the debt. For the first time since the organization of the Territory it can be said that Montana owes nothing.<sup>17</sup>

Several reasons may be cited for the ultimate solvency of the Territory. Among these were the growing population with the consequent development of natural resources, organization of county government which in some areas had been nil in the 60's,<sup>18</sup> better taxation laws and the establishment of more effective systems of assessment and collection. The significant thing about these factors is that they lie on the income side of finance. A balance was achieved because the wealth of the Territory increased tremendously in a very short time, a time during which the scope of government activity increased more slowly.

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<sup>17</sup> Montana, Annual Report of the Auditor and Treasurer of the Territory of Montana, for the Fiscal Year 1882 (Helena, 1883), p. 29.

<sup>18</sup> This is brought out in one of the auditor's reports: "I beg leave respectfully to report for your information that there has been received at my office from the Treasurers of the several counties in this Territory the following amounts...[The reporting counties were Madison, Beaver Head, Edgerton, Deer Lodge, Gallatin, and Jefferson] ...There have been no reports received from the other counties in the Territory, owing in some instances, to a lack of organization, and in others to other causes." Montana, Reports of the Auditor, Treasurer and Indian Commissioner, of the Territory of Montana (Virginia City, 1886).

## 5. Concluding Comment.

From an administrative viewpoint, then, what observations are to be made of the financial administration of the Territory of Montana? The first seems to be that government was regarded as a necessary evil. Men were largely concerned with hewing and digging out an area for orderly living in the frontier. They were not concerned with such things as health insurance, old age benefits and aids to agriculture. They did want laws guaranteeing them the right to private property, security from violence and the personal freedoms known as civil liberties. To maintain these objectives, government was essential. Such a government had to have finances to run on. The objective: law, order, liberty and justice through government. The chief qualifying factor: money to support such an institution.

As a consequence, the primary concern of government leaders was that of establishing a uniform system of taxation and collection. The chief question was not how to control government spending, but simply how to collect enough money on which to operate and stay out of debt. To safeguard public funds qualifications were imposed upon financial officials, but the whole governmental procedure and particularly the fiscal system was very much a day to day affair—one of meeting problems as they arose.

Among the first laws passed were those providing for the fiscal officers—the treasurer and the auditor—and stating their duties. These duties were largely routine in nature and did not allow for any

systematic budgeting or control of expenditures. In retrospect the auditor's annual fiscal report appears to have been a very rudimentary budget though there is no evidence to support the idea that it was viewed as such at the time. There was no effort made by the legislature to closely adhere to it. Resources of the Territory seemed too vast to cause the assumption of the responsibility of planning for the future and that applied as well to the next year's expenditures as to water and land resources.

The State of Montana inherited such a financial "system" from the Territory.



## CHAPTER II

FINANCIAL PROVISIONS IN THE CONSTITUTION OF  
MONTANA

As the population and wealth of the Territory of Montana grew, the public opinion of its inhabitants made increasing demands for statehood. Congress ultimately passed an Enabling Act,<sup>1</sup> approved on February 22, 1889, and a Constitutional Convention was called. Out of the convention came the bulk of the provisions forming the present day Constitution of Montana. Clauses touching upon finances are found throughout the entire document.

## 1. Taxation.

According to Article XII, Section 1, it is the responsibility of the Legislative Assembly to provide for the revenue necessary for the maintenance and support of the State government. An income is to be secured by levies of "uniform rate of assessment and taxation," in accordance with "such regulations as shall secure a just valuation for the taxation of all property" not otherwise exempted by the Constitution. By the same article the Legislature was given the power to impose a license tax, both upon persons and upon corporations doing

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<sup>1</sup> 25 Stat. 676.

business in the State.<sup>2</sup> All bills for raising revenue must originate in the House of Representatives, but the Senate may propose amendments as in the case of other bills.<sup>3</sup> All taxes levied for State purposes are to be paid into the State treasury and can only be withdrawn therefrom by legal appropriations.<sup>4</sup>

The greatest number of Constitutional statements concerning taxation are specific limitations on the revenue raising power of the Legislature rather than extensions of such power. Thus, Article XII, Section 9 states that the rate of taxation on real and personal property must not exceed two and one-half mills on each dollar of valuation. This is immediately qualified by the next clause which reads: "...whenever the taxable property of the State shall amount to six hundred million dollars the rate shall never exceed two mills on each dollar of valuation." Such a provision limiting the rate of taxation was a means employed by several states in the period<sup>5</sup> when

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<sup>2</sup> Inclusion of the license tax was one of the closely contested provisions of the Constitution, it being contended that a license would not fall equally upon the people. It was finally accepted however as an item of police protection with control of liquor sales being the principle objective stated in its justification. Proceedings and Debates of the Constitutional Convention, 1889 (Helena, 1921), pp. 467-470.

<sup>3</sup> Article V, Section 32.

<sup>4</sup> Article XII, Section 10.

<sup>5</sup> William J. Shultz, American Public Finance and Taxation (New York, 1934), p. 272.

Montana's Constitution was drawn up; the thought behind it seems to have been that the way to limit government spending was to limit the wherewithall of its expenditures. Therefore, as property value increased with the consequent growth in tax income, an automatic readjustment in favor of the taxpayers was written into the fundamental law of the State.

This does not mean that the tax rate limit cannot be exceeded under any circumstances however. The same Section set forth that the rate could be increased if a majority of the voters indicated their approval by voting for such a proposal, the proposition being required to specify the rate proposed and the period of time during which such rate should be levied. It was further provided that a levy in excess of the one stated above could be made on livestock for the purpose of paying bounties on wild animals and for stock inspection. This additional levy could amount to no more than four mills on the dollar annually and was to be laid by the State Board of Equalization in accordance with law.

Article XII, Section 11 states that "taxes shall be levied and collected by general laws and for public purposes only." They must be uniform upon the same class of subjects within the territorial jurisdiction of the tax levying sovereign.<sup>6</sup> And in a more general

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<sup>6</sup> A "tax" has been defined by the Supreme Court of the State of Montana as being "an enforced contribution of money or other property, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign on persons or property within its jurisdiction for the purpose of defraying the public expenses." State v. Cowdy 62 M 119.

provision the Legislative Assembly is prohibited from delegating "to any special commission, private corporation or association," any power to levy taxes or supervise or interfere with the money or property of any municipality in any way.<sup>7</sup> The taxing power is exclusively the prerogative of the legislative branch and this power cannot be delegated to a private corporation or association. This negative stipulation does not apply to local units of government however for Article XII, Section 4 says that the legislature may by law "invest" the power of assessing and collecting taxes in the corporate authorities of any county, city or town. Once such a municipality has been incorporated by the State Legislature it too has the exclusive power of taxation within its jurisdiction for its own support and the Legislature is expressly forbidden to levy taxes upon the inhabitants of such corporate limits for county, town or municipal purposes. By an extension of the principle applying here, property of counties, cities, towns, school districts, municipal corporations and public libraries as well as that of the United States and the State of Montana is made exempt from taxation.<sup>8</sup>

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<sup>7</sup> Article V, Section 36.

<sup>8</sup> Article XII, Section 2 as amended by Chapter 142 of the laws of 1917 and made effective December 28, 1918. This section also exempted "such other property as may be used exclusively for the agricultural and horticultural societies, for educational purposes, places for actual religious worship, hospitals and places of burial not used or held for private or corporate profit, institutions of purely public charity and evidences of debt secured by

Paramount among the civil rights included in the "American Way" is the inviolability of private property and the sanctity of these institutions was provided for in Montana's Constitution. Article III, Section 8 forbade that private property should be taken or sold for the debts of public corporations. That such debts might be paid however the section states that the Legislative Assembly may provide by law for their funding or for their payment by assessment and taxation "of all property not exempt from taxation within the limits of the territory over which such corporations respectively have authority."<sup>9</sup>

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mortgages of record upon real or personal property in the State of Montana..." The debate on this section of the Constitution was particularly heated and interesting, especially that part concerning the exemption of religious institutions. See Proceedings and Debates, op. cit., pp. 483-487.

<sup>9</sup> In interpretation of this section the Supreme Court of Montana has said: "This section means nothing more than that the legislature is prohibited from enacting any statute under which private property may be taken to pay the debts of a public corporation, such as a county or city." Edwards v. County of Lewis and Clark as quoted in I R.C.M. 179 from 53 W 359. Under the study here being made the protection of private property is important in that it is guaranteed from inequitable taxation. There are, of course, other safeguards of private property offered in the Constitution. Cases in point: Article III, Section 14, states that, "Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner;" and Section 27 of the same Article reads, "No person shall be deprived of life, liberty or property without due process of law."

Two more taxation provisions remain to be considered. The first deals with the method of assessment of mines and mining claims. A Constitutional provision regarding the levies on such property was deemed essential because of the impossibility of ascertaining the actual value of mineral lands. Therefore, it was provided in Article XII, Section 3 that all mines and mining claims should be taxed at the price paid thereon in purchase from the United States. In addition, surface improvements on such land made for mining or other purposes were to be taxed according to their assessed value; and, finally, the "annual net proceeds of all mines and mining claims shall be taxed as provided by law."<sup>10</sup>

By an amendment added in 1934 the Legislative Assembly was empowered to levy and collect taxes upon incomes of persons, firms and corporations for the purpose of replacing property taxes.<sup>11</sup> Such taxes were to be "graduated and progressive" and were to be used for the support of public schools and the State government. Thus Montana adopted the income tax similar to that which the sixteenth amendment of the Constitution of the United States had made a part of the federal tax system.

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<sup>10</sup> This section, too, was one which gave rise to stormy debate in the Constitutional Convention. See Debates and Proceedings, op. cit., pp. 470-479.

<sup>11</sup> Article XII, Section 1a. The section was enacted by the Legislature in 1933, approved by the voters in November, 1934, and became effective on December 6, 1934.

## 2. Appropriations.<sup>12</sup>

The legislative authority of the State of Montana is vested in the Legislative Assembly, but in most instances of law enactment this is not an exclusive grant; for "the people reserve to themselves [the] power to propose laws and to enact or reject the same at the polls...and also reserve power, at their own option, to approve or reject at the polls, any act of the Legislative Assembly..."<sup>13</sup>

However, this reservation of popular control does not pertain to appropriation measures.<sup>14</sup> Specific language of the same section exempts enactment or rejection of appropriation proposals as well as the right of approval or rejection of appropriation acts of the Legislative Assembly from the reservation of popular referendum. Thus the Legislature holds supreme control in the sphere of appropriation legislation.

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<sup>12</sup> The word "appropriations" as used in the Constitution means, "the setting apart of a portion of the public funds for a public purpose, or a specific designated fund in esse or for which provision has been made, it not being necessary, to constitute a valid appropriation, that the fund be then in the treasury." Quoted in I R.C.M. 103 from State ex. rel. Bommer v. Dixon et al., 59 M 58.

<sup>13</sup> Article V, Section 1.

<sup>14</sup> Ibid.

Though the lawmaking body need not share its appropriating prerogative, it is nevertheless subject to certain Constitutional limitations in its exercise of the power. (It would, of course, be sensitive to public opinion too, although that lies outside a consideration of Constitutional checks.) First, appropriations cannot be made for any longer term than two years. Then, no appropriations are to be made or any expenditures to be authorized whereby the expenditures of the State during any fiscal year shall exceed the total State tax income currently provided for by law. The Legislative Assembly may, however, make increased appropriations if they make provision for the levy of a tax sufficient to pay such appropriations at a rate not in excess of the two and one-half mill levy previously mentioned. This provision applies in normal times, but may be disregarded in case of insurrection, invasion or war.<sup>15</sup> It has the effect of tying in closely the separate functions of taxation and appropriation. While this does not unite the activities for sound legislative planning, it does, at least, point out a responsibility for maintaining a balance between income and expenditure.

General appropriation bills are to embody nothing but appropriations for the ordinary expenses of the three branches of the State government--legislative, executive and judicial--interest on the

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<sup>15</sup> Article XII, Section 12,



public debt and for the public schools.<sup>16</sup> All other appropriations must be made by separate bills each embracing one subject. The generality of this section has given rise to the need of judicial interpretation. In Killer Insurance Agency v. Porter et al.,<sup>17</sup> the Supreme Court of Montana defined "ordinary expense" as "any expense which recurs from time to time and is reasonably to be anticipated as likely to recur in the proper operation and maintenance of the departments of the State government." The term "public debt" has been held to include warrants as well as bonds;<sup>18</sup> thus, allotment of funds may be included in the general appropriation bill for payment of delinquencies on principal and interest of outstanding warrants. The second sentence of the section would seem to indicate that all appropriations except those of general nature must be passed by individual bills; but the Court has held in Hill v. Rae<sup>19</sup> that where an appropriation is merely incidental to a "larger but single subject of legislation," it may be included in the enactment concerning that

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<sup>16</sup> Article V, Section 33.

<sup>17</sup> 93 M 567.

<sup>18</sup> State ex rel. Palmer v. Hickman, 11 M 541.

<sup>19</sup> 52 M 378.

subject and need not be made by a separate bill.<sup>20</sup>

The scope of appropriations purposes is limited by Article V, Section 35 which states that "no appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the State, nor to any denomination or sectarian institution or association." The qualification is emphasized and narrowed by Article XI, Section 8 which says that no unit of government within the State of Montana shall by appropriation or any other grant of land or property aid any institution controlled in whole or in part by "any church, sect or denomination whatever."

Finally, to prevent a stampede of special appropriation measures from being presented and rushed through the Legislature during the closing days of a session, when the pressure of public business is at its height and the danger is very strong that measures will be passed without due consideration, Section 21 of Article V forbids the introduction of any appropriation bill, except for the expenses of the government, within ten days of the close of the session, except by unanimous consent of the branch in which it is sought to be introduced.

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<sup>20</sup> Similarly Article V, Section 23 states that "No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title..."

### 3. Debt Creation.

Just as they were careful to prescribe the taxation powers of the legislature, the framers of the State Constitution were cautious about the extent of public debt which might be permitted, and the guarantees for repayment of public indebtedness. Only in the case of war, invasion or insurrection can the aggregate public debt exceed the sum of one hundred thousand dollars unless the law authorizing such indebtedness is first submitted to the people and the majority indicates its approval in a general election. Otherwise, legislative enactments can provide for raising public funds through incurring a debt not to exceed one hundred thousand dollars. Such a law is irrevocable until the indebtedness has been repaid fully; it must specify the purpose to which the funds raised will be applied, provide for the levy of a tax sufficient to pay the interest, and extinguish the principal of the debt within a given time limit.<sup>21</sup> The State is forbidden to assume the debt or any part of a debt of any county, city, town or municipal corporation.<sup>22</sup>

Railroad development was nearly at the peak of its expansion in Montana at the time the State Constitution was being drawn up.

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<sup>21</sup> Article XIII, Section 2.

<sup>22</sup> Article XIII, Section 4.

Pressure upon the Territorial government seeking to gain legislation and grants favorable to railroad corporations had been numerous and serious. Consequently, in an attempt to eliminate the possibilities of future graft and collusion between railroad "interests" and State officials, certain features were incorporated into the Constitution. The first statement concerning this matter which appears in the Constitution reads:

The legislative assembly shall have no power to pass any law authorizing the State, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.<sup>23</sup>

A second statement is even more explicit, providing that neither the State nor any county, city, town or municipality shall ever,

...loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, except as to such ownership as may accrue to the state by operation or provision of law.<sup>24</sup>

There can be little doubt as to the intent of these measures. The history of their effectiveness--or ineffectiveness--in the elimination of connivance between Montana government and private corporations should be a most interesting study!

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<sup>23</sup> Article V, Section 38.

<sup>24</sup> Article XIII, Section 1.

To preclude the possibility of a diversion of public school money from the purpose for which it was intended to other uses--such as defraying the public debt or to be expended by some other branch of the State government--the inviolability of the public school fund plus the interest arising from such fund is guaranteed by Section 12 of Article XI. Section 3 also states that

...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.

#### 4. Financial Officers.

It is readily seen from the foregoing that the Constitution of the State of Montana goes into considerably more detail with regard to public finance than does the Constitution of the United States. Similarly, the State's fundamental law is far more explicit in outlining the financial administrative framework and the duties of various officials than is the federal Constitution.

The Montana State Constitution established an executive department consisting of a Governor, Lieutenant-governor, Secretary of State, Attorney General, State Treasurer, State Auditor and Superintendent of Schools, each of whom is elected to office for a term of four years.<sup>25</sup> All of the officers of the executive

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<sup>25</sup> Article VII, Section 1. (The State Treasurer is not eligible to his office for the succeeding term.)

department plus all public institutions of the State are required to keep an account of all the money which they receive and the sources from which it comes, of the services which they perform, and of all the money disbursed. A semi-annual report of such transactions is to be made to the Governor under oath. At least twenty days prior to each regular session of the Legislative Assembly they also are to make "full and complete reports of their official transactions" to the Governor who then transmits them to the Legislative Assembly.<sup>26</sup> The Governor himself submits to the Legislative Assembly a statement "with vouchers" of the expenditures of State funds which he has made.<sup>27</sup>

Something akin to budgetary procedure is laid by the stipulation that the Governor shall transmit to the Legislature at the beginning of each session "estimates of the amount of money required to be raised by taxation for all purposes of the state."<sup>28</sup> This work of the chief executive is facilitated by the qualification in the same section giving him power to appoint at any time he deems it necessary a committee "to investigate and report to him upon the condition of any executive office or state institution." Such an investigative power is similar to that exercised by the president of the United States through his Executive Office.

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<sup>26</sup> Article VII, Section 19.

<sup>27</sup> Article VII, Section 10.

<sup>28</sup> Ibid.

Very different from the president's power to veto legislative acts sent to him from Congress is the veto power of the Governor of Montana. Article VII, Section 13 states that:

The governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts approved shall become a law, and the item or items disapproved shall be void, unless enacted in the following manner: If the legislative assembly be in session he shall within five days 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.<sup>29</sup>

Thus the Constitution of Montana provides that the Governor shall have the "item veto" power in connection with appropriation legislation. Its use shall be observed more closely in a later chapter.

The other financial officers of the executive department of the State are the Auditor and the Treasurer. The Constitution makes no enumeration of the Auditor's duties, but it does specify the responsibilities of the Treasurer.

The Treasurer is required to keep a separate account of each fund in his hands and is to make a quarterly report in writing, under oath, of such funds to the Governor, their credit, the amount of all money collected and the places where such money is held or deposited

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<sup>29</sup> Article VII, Section 13.

along with the number and amount of every warrant "paid or redeemed by him during the quarter." The Legislative Assembly may make further regulations by law for the "safe keeping and management of the public funds in the hands of the treasurer;" but regardless of such rulings the Treasurer and his subordinates are still responsible for the funds in their charge.<sup>30</sup> Further, no money is to be paid out of the treasury except "upon appropriations made by law," or upon a warrant drawn up by the "proper officer."<sup>31</sup>

Though not classed as an office of the executive department, one other official position dealing with finance is established by the Constitution. That is the office of the State Examiner, to be filled by appointment by the Governor and confirmed by the Senate. His duty is to examine the accounts of the State Treasurer, the supreme and district court clerks, and all county treasurers and the financial officers of such other public institutions as may be prescribed by law. He is to report annually or oftener if required to such officers as the Legislature designates.<sup>32</sup>

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<sup>30</sup> All of the provisions set forth in this paragraph are laid down in Article XII, Section 13.

<sup>31</sup> Article V, Section 34.

<sup>32</sup> Article VII, Section 8.



## 5. Financial Boards.

A Board of Examiners is also provided by the State Constitution,<sup>33</sup> but its duties are in no way similar to those of the State Examiner. Board members are the Governor, Secretary of State and Attorney General of the State serving ex officio. It is the duty of the Board to examine all claims against the State, "except salaries or compensation of officers fixed by law," and no claim against the State, with the exceptions mentioned, are to be passed upon by the Legislature without having first been acted upon by this Board. The Board has the additional responsibility of recommending the suspension of the State Treasurer by the Governor for the protection of the public money.

Not provided for in the Constitution when it was first adopted, but added by amendment in 1908 is the Depository Board. Composed of the Governor, State Auditor and the State Treasurer, this board has "full power and authority" to select the depositories in which all of the funds in the hands of the State Treasurer shall be deposited. The rate of interest on such funds is to be prescribed by law. Once money has been deposited under the direction of this Board in accordance with law the Treasurer is no longer responsible for its loss for any other reason than his own "neglect, fraud or dishonorable conduct."

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<sup>33</sup> Article VII, Section 20.

This amendment was included in Article XII, Section 14 which continued to prohibit the making of profit from public moneys, or making use of the public money by the Treasurer or any other public officer for any purpose not authorized by law. Such an illegal act was constituted a felony and conviction carried the penalty of disqualification to hold any public office in the future besides such other punishment which the law might provide.

Section 15 of Article XII set up the State Board of Equalization which has grown to be one of the major organs of the Montana State fiscal system. Originally the members of the Board were the Governor, Secretary of State, State Treasurer, State Auditor and Attorney General. This was amended in 1922 and thereafter the number of members of the Board was to be three, all appointed by the Governor, by and with the advice and consent of the Senate for a term of six years. The original terms were to be two, four and six years respectively and thus it was established that there should be experienced members on the Board always thereafter. No more than two of the members can be of the same political party and all are required to devote their full time to the duties of the Board.

The function of the Board of Equalization is written as follows:

The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of the county assessors and

county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law.<sup>34</sup>

The Constitutional duties are indeed of considerable extent and importance and coupled with the further responsibilities imposed by law in accordance with the last sentence of the above section they make the Board of Equalization a most significant instrument in the administration of State finance.

Section 16 of Article XII imposes the further obligation on the Board of Equalization of assessing the franchise, roadway, roadbed, rails and rolling stock of all railroads operating in more than one county in the State of Montana. The proceeds from such assessments are to be apportioned to the various local governmental units--counties, cities, towns--in which the railroads are located. This is a specific conferment of original assessment power on the State Board of Equalization; the Montana Supreme Court has held that this grant of power does not imply however that all other powers of original assessment are excluded from the Board.<sup>35</sup>

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<sup>34</sup> Article XII, Section 15.

<sup>35</sup> State v. State Board of Equalization, 56 M 413.

Two other boards exist which have duties of a supervisory nature relating to State funds. The first is the State Board of Land Commissioners which is composed of the Governor, Secretary of State, Attorney General and Superintendent of Public Instruction serving ex officio.<sup>36</sup> The function of this Board is to classify lands which come under the ownership of the State of Montana as to their value for grazing, timber, agriculture or town and city use.<sup>37</sup> It also has direction and control of the sale or leasing of school lands of the State under the regulations and restrictions of law.<sup>38</sup>

Finally there is the Supervisory Investment Board.<sup>39</sup> It is composed of the Justices of the Supreme Court of Montana and has supervision over the administration of the money in the Trust and Legacy Fund. Each January the Board is to review the administration of the previous year and decide uncertain questions which may have arisen. It is to ascertain that the State Board of Education performs its duties properly in the actual administration of the Fund.

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<sup>36</sup> Article XI, Section 4.

<sup>37</sup> Article XVII, Section 1.

<sup>38</sup> Article XI, Section 4.

<sup>39</sup> Article XXI, Section 17.

## 6. Concluding Comment.

Though much of the detail of financial administration was to be provided by law, the Constitution of Montana set up the basic framework which exists today. Therefore any general revision of the State financial system would demand Constitutional revision--a factor which adds to the difficulty of change. However, the basis set forth was broad enough to allow the adoption of some administrative improvements by law rather than by amendment. An outstanding one of these is the legislative budget.

## **PART II**

### **Budgeting**

## CHAPTER III

## GENERAL BUDGET FEATURES AND MONTANA'S

## BUDGET ACT

## 1. General Budget Features.

A budget<sup>1</sup> may be a relatively simple or complex document according to the policy of the government employing the budget system, the purpose which it is to accomplish or the nature of the government itself. Depending upon these considerations, the document may be a very brief estimate of the expenses of the government for an ensuing period based largely on expenditures of the past with anticipated income similarly determined; or it may be an instrument of much broader government planning wherein wide social change is involved in which case the budget document must be much more comprehensive providing for all conceivable expenditures and predetermining the probable income as closely as possible.

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<sup>1</sup> "Budget" is derived from the French word bougette meaning bag or wallet. "In England the word 'budget' was applied for a long time to the great leather bag in which the King's treasurer or finance minister (later chancellor of the Exchequer) carried the documents explaining the country's needs and resources when he went to Parliament. From his opening of this bag before Parliament came the phrase 'opening the budget,' which is still used today. Gradually the meaning of the word 'budget' shifted from the bag itself to the documents which the bag contained; that is, to the financial estimates and the supporting statement of accounts. Then, during the later development of English government, the 'budget' took on a much broader meaning: it came to signify certain basic elements in the established system of constitutional rights and to embrace

Whether the budget be simple or complex there are certain features which are common to all such documents. First, the budget statement comprises a financial plan which seeks to establish a balance between expenditure and income. Second, to accomplish this the monetary requirements of government must be analysed for the ensuing fiscal period and itemized along with all of the sources of revenue and the probable amounts thereof. It may be necessary to have new sources of revenue proposed. Finally, the plan must be made for some definite period of time. These essential features of a budget have been described by Buck as "equilibrium, comprehensiveness and annuality."<sup>2</sup>

In addition to the plan as set forth in the budget document there must be a procedure for "formulating, authorizing, executing and controlling this plan;" and finally there must be some "governmental authority" responsible for effecting the various steps of this procedure. All together the plan, the steps in its development and the governmental agencies concerned have been termed the "budget system."<sup>3</sup>

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certain rules of procedure under which these rights were maintained and exercised." A. E. Buck, The Budget in Governments of Today (New York, 1934) p. 5. Thus evolved the modern meaning of budget: a financial statement of the estimated income and expenses of a country for a period of time. It is significant that this meaning and the process which it describes has grown up with representative government.

<sup>2</sup> Ibid., p. 142.

<sup>3</sup> Ibid., p. 46.



## 2. Steps in the Development of Montana's Budget System.

As has been previously noted,<sup>4</sup> a rudimentary budget was provided for by the first Legislative Assembly of the Territory of Montana in the act requiring that the Territorial auditor furnish to the Legislative Assembly a detailed account of the condition of the revenue and expenditures of the preceding year, with estimates for the amount of revenue and expenditures for the succeeding year at the commencement of each regular session. The essence of this duty continues to the present day in the statutes of Montana<sup>5</sup> although it has been modified slightly, particularly in 1895<sup>6</sup> when the law was changed to require that the report of the Auditor be given to the Governor on the first Monday of November next preceding each regular session of the Legislative Assembly instead of directly to the Assembly itself. There is no evidence to indicate that the legislators who provided for this estimate in the first laws of the Territory did it with any conscious effort to establish a budget system. As with other aspects of early Territorial government the provision was included to meet a practical need and arose from no theory of government.

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<sup>4</sup> See page 6.

<sup>5</sup> 151 R.C.M. 1935.

<sup>6</sup> 420 R.C.M. 1895.

An examination of the Auditor's reports indicates that the provisions of this law were not always adhered to by those early officers. Many of the reports of Auditors both in the Territorial and early State government contained no estimate of either expenditures or revenue for the ensuing fiscal period whatsoever. And when such a statement was included it was of the briefest form in all cases.

With the change in the law whereby the Auditor was required to make his report to the Governor instead of to the Legislative Assembly it would seem that the duty of reporting the estimates for the forthcoming fiscal period would be imposed upon the Governor. Such was not the result. In several instances the Governor did make specific financial proposals to the legislative body.<sup>7</sup> These largely comprised recommendations concerning taxation, economy or the public debt. Upon a few occasions the Governor transmitted the Auditor's statement directly on to the Legislature. But in only one instance in the period between the founding of the State and the establishment

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<sup>7</sup> The state Constitution made this one of the Governor's duties. Article VII, Section 10 states in part: "...The governor shall at the beginning 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 at the beginning of each session present estimates of the amount of money required to be raised by taxation for all purposes of the state."

of the budget system did the Governor send a message to the Legislature in any way resembling a budget statement. This occurred in 1907 when Governor Joseph K. Toole in a special message<sup>8</sup> to the Montana State Senate at the 10th session of the Legislature offered an estimate of expenditures and revenues for the years 1907 and 1908. The statement amounted in part to a recapitulation of the corresponding sections of the Auditor's report to the Governor<sup>9</sup>; however the Governor went into greater detail in presenting his data and had made changes in the Auditor's figures in some cases. Indications are that Governor Toole took a strong interest in this presentation and had done a good bit of personal investigation in its preparation.<sup>10</sup>

### 3. The Budget Act.

In the period from 1911 through 1918 twenty-nine states in the United States adopted some degree of budget system legislation.<sup>11</sup>

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<sup>8</sup> Joseph K. Toole, A Special Message to the Senate by the Governor With Statement Showing Financial Condition of the State, Estimates, Contingent Expenses, Etc. 1907 (Helena, 1907).

<sup>9</sup> Montana, Biennial and Annual Reports of the State Auditor of the State of Montana for the Fiscal Years Ending November 30, 1905-6 (Helena, 1906).

<sup>10</sup> Joseph K. Toole, op. cit., p. 3.

<sup>11</sup> Leonard D. White, Trends in Public Administration (New York, 1933) p. 189.

In 1919 the 16th Legislative Assembly of the State of Montana followed the trend in passing "An Act to provide a budget system for the control of all expenditures of state moneys."<sup>12</sup>

The primary innovation of the "Budget Act" as the law was to be called<sup>13</sup> was the establishment of the State Board of Examiners as the budget making authority of the State. The central statement and the details of this duty are contained in section 6 of the Act which provides that:

The state board of examiners shall deliver to the presiding officer of the house of representatives and of the senate the budgets for all the proposed appropriations, clearly itemized and classified on or before the 10th day of each session; and the presiding officer of the house of representatives and of the senate shall promptly refer said budgets to the proper committee. The general appropriation bill for the maintenance of the several departments of the state government and the several state institutions shall be based upon the budget so submitted; and the legislative assembly may amend the budgets by increasing or diminishing the items therein, except that

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<sup>12</sup> The bill (House Bill No. 304, otherwise known as the Rasmussen Bill) was introduced into the House of Representatives by the chairman of the Ways and Means Committee, C. A. Rasmussen of Glendive, Montana, on 13 February, 1919. Passed by the Senate on 6 March, 1919, it was approved by the Governor on 11 March, 1919. Session Laws, 1919, Chapter 205, pp. 491-494. The Budget Act as modified by subsequent legislation is in Chapter 27, R.C.M. 1935. For steps in the Bill's passage see: House Journal of the Sixteenth Legislative Assembly of the State of Montana pp. 441, 443, 449, 504, 520, 557, 606, 628, 741, 782, 787, 789, and the Senate Journal of the Sixteenth Legislative Assembly of the State of Montana pp. 342, 345, 396, 400, 431, 436, 533, 557, 558, 571.

<sup>13</sup> Section 1.

the legislative assembly shall not amend the budgets so as to affect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.<sup>14</sup>

Subsequently the Board was required to designate from which fund or funds appropriations were to be made.<sup>15</sup>

In composing the budget plan the first steps are taken by the various executive departments, agencies and institutions of the State government: "each department of the state government and all state institutions and agencies requiring an annual appropriation from the state" is to present a request therefore to the State Board of Examiners on or before the 1st<sup>16</sup> day of November of each year preceding a regular session of the Legislative Assembly.<sup>17</sup> It is stipulated that such requests are to be made by the head of the requesting department, institution or agency. For the judiciary the Clerk of the Supreme Court is to make the request under the direction of the Chief Justice of

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<sup>14</sup> The wording of this section and its organization was revised in 1933, but the essence of the law remains the same and is now contained in Sections 295(2) and 299, R.C.M. 1935.

<sup>15</sup> Session Laws, 1933, Chapter 167, Section 3.

<sup>16</sup> The original act set the deadline as the 15th of November. (Section 2) This was changed in 1933 to the 1st of November. Session Laws, 1933, Chapter 167, Section 1.

<sup>17</sup> Section 3.

the Supreme Court.<sup>18</sup> It is the duty of the State Accountant<sup>19</sup> to furnish blank forms upon which all requests for appropriations are to be made in accordance with rules set forth by the State Board of Examiners.<sup>20</sup>

Once these requests have been submitted, it is the power and duty of the State Board of Examiners to examine them and determine the "necessity of the appropriations so requested." To facilitate such examination, the State Board of Examiners has the power to require the proper State officials in State agencies, and institutions applying for State money and appropriations to submit itemized statements and other information as the Board may direct.<sup>21</sup> Following its investigation, the Board of Examiners proceeds to draw up the budget document preparatory to its presentation to the Legislative Assembly within ten days after its convention in regular session.<sup>22</sup>

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<sup>18</sup> Section 3.

<sup>19</sup> The original act made this the duty of the State Auditor. The duty was transferred to the State Accountant in 1933. Session Laws, 1933, Chapter 167, Section 2.

<sup>20</sup> Section 4.

<sup>21</sup> Section 9 (2).

<sup>22</sup> Before the 10th day of the legislative session the State Board of Examiners is to have copies of the Budget printed and distributed to members of the Legislative Assembly and to all "State departments, institutions and agencies." Section 10.

Originally two budgets, one for each of the two ensuing fiscal years, were to be presented to the House of Representatives and to the Senate. This was modified in 1933 and thereafter just one budget was to be submitted for the ensuing biennial period and was to "embrace an itemized estimate of the appropriations for each of the two ensuing fiscal years."<sup>23</sup> Such budget must contain:

....a complete plan of proposed expenditures and estimated revenues for the particular fiscal year to which it relates; and shall show the estimated surplus or deficit of revenues at the end of such year. Accompanying each budget shall be a statement showing: (1) The revenues and expenditures for each of the two fiscal years next preceding; (2) The current assets and liabilities, reserves and surplus or deficit of the state; (3) All debts and the amount of all moneys in the state treasury to the credit of each fund; (4) Any explanation the board of examiners may desire to make as to the important features of any budget and any suggestions as to the methods for the reduction or increase of the state's revenue.<sup>24</sup>

Each budget so submitted is to be divided into two parts, the first part being designated "Governmental Appropriations"<sup>25</sup> and the second part termed "General Appropriations."<sup>26</sup>

The section covering governmental appropriations is to include itemized estimates of the appropriations for the two ensuing fiscal years for the support of the three main branches of State government,

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<sup>23</sup> Session Laws, 1933, Chapter 167, Section 3.

<sup>24</sup> Section 5 (b)

<sup>25</sup> Section 5 (c)

<sup>26</sup> Section 5 (d)

i.e. the legislative, executive and the judicial; and for the establishment and maintenance of a school system throughout the State, for salaries payable under the Constitution and laws of the State, for payments discharging the principal and interest of any bonded indebtedness of the State and finally for "such other purposes as are set forth in the state constitution."<sup>27</sup>

The second part of the budget—General Appropriations—is to include "all other estimates and appropriations."<sup>28</sup>

According to the Budget Act every appropriation bill presented in the Legislative Assembly must be one of two types—either a "Budget Bill" or a "Supplementary Appropriation Bill."<sup>29</sup> A Budget Bill is one appropriating State money for purposes outlined in the budget plan submitted to the Legislature by the Board of Examiners.

To assure that adequate appropriation measures will be passed during the legislative session Section 8 of the act states that neither the Senate nor the House of Representatives is to consider any other appropriations until the Budget Bill has been finally acted upon in both houses. Further, Section 9 provides that if the General Appropriation Bill has not been finally acted upon by both the Senate and the House of Representatives on or before the 30th day of the

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<sup>27</sup> Section 5 (c)

<sup>28</sup> Section 5 (d)

<sup>29</sup> Section 5 (a)



session of the Assembly, then the General Appropriation Bill is to be considered to the exclusion of all other bills until final action on it has been taken.

A Supplementary Appropriation Bill is one which provides a sum of money for some purpose not established in the budget. Such appropriations are to be embodied in a separate bill limited to some "single work, object or purpose therein stated." A Supplementary Appropriation Bill cannot become law unless it is passed in each branch of the Legislature by a two-thirds majority of all the members by roll call vote.<sup>30</sup> And every such bill must be first submitted to the budgetary authority, i.e. the State Board of Examiners.

When a member of the Legislative Assembly introduces such a Supplementary Appropriation Bill he is required to submit an extra copy to the Clerk who transmits it to the State Board of Examiners. Within five days of the receipt of the bill the Board of Examiners is to return the bill to the Clerk, with recommendations and suggestions regarding the appropriation to be transmitted to the committee which is considering the bill.<sup>31</sup>

Finally, the Act provides that the State Board of Examiners or a representative of the various executive departments, boards,

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<sup>30</sup> Section 8.

<sup>31</sup> Section 9 (3).

and institutions of the State has the right or may be requested by either branch of the Legislative Assembly to appear and be heard with reference to a Budget Bill during its consideration.<sup>32</sup> In this manner the Legislature may receive more direct information concerning the financial situation and the requests of various State activities and, on the other hand, these various agencies may have the opportunity to "plead" their special cases before the legislators.

#### 4. Concluding Comment.

Specifically now, what are the important features of the Budget Act? In resume' they are as follows:

1. The Budget Act provides that the budget shall be prepared by a commission composed of the Governor, Secretary of State, and Attorney General, i.e. the State Board of Examiners all of whom are elected by the people rather than being responsible to the executive head of the State or to the Legislature.

2. The General Appropriation Bill for the maintenance of the departments and institutions of the State government must be based upon the budget submitted. Thus, the State Board of Examiners is made responsible for leadership in financial legislation.

3. Supplementary Appropriation Bills must be shown to the State Board of Examiners which is required to offer a statement of

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<sup>32</sup> Section 7.

advice on the merits of the bill to the Legislative Committee considering the bill; and in order to become law such bill must be approved by two-thirds of the membership of both branches of the Legislature.

4. Definite time limits are set on both the submission of the Budget to the Legislative Assembly and the period in which the Assembly has to consider the plan.

5. Members of the Board of Examiners or other officials may appear or be called to appear before the Legislative Assembly to testify on budget proposals.

6. While the provisions of the budget are laid down by the Board of Examiners the final approval rests with the representatives of the people.

7. No provision is made in the Budget Act for the administration of the budget once adopted.

It seems obvious that the Montana Legislative Budget, as set up by the Budget Act, conforms to the general principles stated at the beginning of this chapter. It has equilibrium, estimating both income and expenditures of government. It is comprehensive in that it analyses the government's financial requirements in detail, classifying them as of governmental or general nature. In this respect the Budget Act established a budget system which goes far beyond the rudiments of a budget found in either the Territorial or earlier State financial administration. Finally, it has annuality in that the Budget is

prepared for the ensuing biennial period and embraces an itemized estimate for those two years. These are all aspects of the financial "plan."

Now the formulation, authorization, execution, and controlling of this plan must be investigated in detail.

## CHAPTER IV

## BUDGET MAKING

## 1. The First Legislative Budget of Montana.

Passage of the Budget Act and the delegation of the task of budget making apparently caught the State Board of Examiners unprepared to engage in such a large, technical activity.<sup>1</sup> Consequently, they requested the State Efficiency and Trade Commission<sup>2</sup> to take over the work and prepare a budget plan for presentation to the Legislative Assembly in 1921.

The State Efficiency and Trade Commission had been established by the Sixteenth Legislative Session in 1919<sup>3</sup> and given a two-fold duty. First, it was to conduct investigations of the financial and business policies of the State and its various officers, bureaus, boards and departments to determine abuses, inefficiency, and unnecessary expenditures of money, and then to devise ways of correcting such faults, making suggestions for more satisfactory bookkeeping methods. Second, the Commission was to conduct a full investigation of the subject of wholesale and retail prices of merchandise, along

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<sup>1</sup> Montana, Report of the State Efficiency and Trade Commission Rendered on November 1, 1919 to Governor S. V. Stewart (Helena, 1919) p. 59.

<sup>2</sup> Ibid.

<sup>3</sup> Session Laws, 1919, Chapter 184. The three members of the Commission were named in the law which created it. It was to report its findings to the Governor.

with trade and manufacture, unfair trade practices and combinations or agreements in restraint of open competition. To accomplish these ends the Commission was given full power to enter premises, compel the attendance of witnesses, and subpoena records.<sup>4</sup> In view of these duties the delegation of the original step in budget planning to the Commission by the State Board of Examiners was logical, but the scope of the many investigations which the Commission was detailed to undertake imposed considerably more work upon it than could be accomplished adequately in the time limit set.<sup>5</sup>

Since the Commission obviously could not perform its investigative duties and compose a budget plan too, it was decided by that group and the State Board of Examiners that the Commission should hire the expert service necessary for developing a budget plan.<sup>6</sup> Therefore the service of Tanner, Gilman & Ellis, Certified Public Accountants, a Chicago firm, was secured. The State Accountant, Mr. R. J. Lemart, was appointed by the State Board of Examiners to act as its representative working with the members and technical experts of the Efficiency Commission and the accounting firm. As a result the first budget document and the budget plan which has since

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<sup>4</sup> Ibid., Sections 3 and 4.

<sup>5</sup> Established on 10 March, 1919, the Commission's term was to expire on 1 November, 1919. Ibid., Section 6.

<sup>6</sup> Montana, Report of State Efficiency and Trade Commission, op. cit., p. 64.

been largely followed was drawn up by a group of accounting experts from outside of the State rather than any administrative body of Montana, though, of course, the State Board of Examiners remained legally responsible for the plan's preparation.

In accordance with the Budget Act the first budget was composed of two sections and an introduction. The Introduction included summaries of transactions of all funds for the years 1919 and 1920, a recapitulation of expenditures of the various departments for those years, a consolidated statement of expenditures from all departments and funds, and a summary of the General Fund income, actual and estimated. The first of the main sections embodied "Governmental Appropriations," and the second part was composed of "General Appropriations." Within each section were component "schedules."<sup>7</sup>

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<sup>7</sup> Schedules within the main sections were lettered alphabetically with a number following. Thus, the first section under Governmental Appropriations was designated "A 1," and was entitled "Legislative Department—Regular Session." Under this heading were component schedules 1, 2, and 4, entitled "Expenditures," "Income," and "Balance Sheet," respectively. Vertically each page was composed of columns showing the following information from left to right: first, the account number; second, the classification (such as Senate, Operation, etc.); the next two columns appearing under the general heading of "Actual," list the actual expenditures for the periods of March 1, 1918 to February 23, 1919, and March 1, 1919 to February 29, 1920; then, next in three columns under a heading of "Estimated," are shown the estimated expenditures (or income) for the periods March 1, 1920 to February 28, 1921; March 1, 1921 to February 28, 1922, and March 1, 1922 to February 23, 1923. The first of these columns was necessitated by the fact that the budget was being composed during the time covered by that column and so income for the period was partly known and partly estimated. When the beginning of the fiscal

By the time that the first Legislative Budget of Montana was ready for presentation to the Legislative Assembly it was apparent that there were certain defects in the financial system which could not be corrected by the adoption of a budget system alone or would even permit the maximum benefit which might be expected from such a system so long as they were continued. These were briefly pointed out by the State Accountant in his explanatory note included in the opening pages of the first budget document and also were mentioned by the private accounting firm which took charge of preparing the budget.

The first of these was the need of a uniform system of accounting for all offices and departments with some official familiar with the budget procedure in charge of installing such system and holding sufficient authority to enforce adherence to it. R. J. Lemert indicated that such a function could be performed appropriately by the department charged with the budget preparation.<sup>8</sup>

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year was later changed to 1 July this difficulty was overcome. Finally, two columns were provided at the extreme right in which figures could be written by the Appropriation Committee. The details of the first budget plan were followed, in general, until in 1927 only two schedules were used under each main classification (such as A 1) where there had been three up to that time (number 1, 2 and 4 as indicated above.) These later schedules were numbered 1, entitled "Income and Expenditures," and including a statement of balances and reversions; and 2, called "Expenditures Detailed." This system is still used.

<sup>8</sup> Montana, Montana Legislative Budget 1921 (Helena, 1920) Explanatory comment.



The firm of Tanner, Gilman & Ellis offered a more elaborate proposal for the efficient handling of accounts in its report to the State Efficiency and Trade Commission. The language of its message was at once critical of the existing administrative system of the State and constructive:

One of the big problems in your State is the problem of efficient administration. This problem is both continuous and permanent. Conditions to be met by your administrative officers are frequently changed, new activities are created and old activities are discontinued. It seems that your State is in great need of a permanent Department of Accounts, Statistics and Reports.<sup>9</sup>

Such a department as was suggested by Tanner, Gilman & Ellis according to their statement would have as its main functions the installation of uniform accounting and statistical systems, continuous audits of departments and institutions to maintain the "integrity of the accounting and statistical systems and to guard against inefficiency and dishonesty"; to compile the biennial budget and to furnish expert advisory service to the legislative financial committees.<sup>10</sup> Such a department has never been created.

The second defect emphasized in the preparation of the first budget was the period of the fiscal year. Various fiscal years were

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<sup>9</sup> Letter from Tanner, Gilman & Ellis, October 4th, 1919, printed in the Report of the State Efficiency and Trade Commission, op. cit., pp. 61-64.

<sup>10</sup> Ibid., pp. 78-79.

used by different State departments with the result that records were confused and particularly the analysis of them in preparation of the budget was difficult.<sup>11</sup> Tanner, Gilman & Ellis recommended that June 30 be adopted as the date for ending a uniform fiscal year. They pointed out that such a time would allow an interval between the passing of appropriations by the Legislature and the time when they would become available, thus the various departments would know what amounts they were being allowed to spend and would have time to plan accordingly. And such a date would put the State accounting on the same period as the Federal Government which would facilitate the reporting of all departments making reports to the latter government.<sup>12</sup>

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<sup>11</sup> Of this Tanner, Gilman & Ellis said: "We find several different fiscal years in use in the keeping of State records and the publishing of State reports. For example, appropriations are made for a year ending February 28; while reports of State officers to the Legislature cover a year ending June 30. Certain records of the Secretary of State are kept on the basis of the calendar year. Much confusion will be prevented if one fiscal year is adopted for all State purposes." Ibid., p. 83.

<sup>12</sup> Ibid., pp. 83-84. Similar suggestions were several times made in the annual reports of the State Auditors and Treasurers, but with apparently no resulting action upon the part of the Legislative Assembly. One such declaration was made in 1920: "Your attention is respectfully invited to the fact that under existing laws the fiscal year ends November 30, in the midst of the taxpaying period. This necessarily results in needless confusion which could be obviated by changing the termination of the fiscal year from November 30 to June 30, the appropriation dates to conform thereto....I respectfully recommend that legislation be enacted to change the date of the beginning of the fiscal year, for all departments of the state, as above suggested." - George P. Porter, Biennial Report of the State Auditor of the State of Montana for the Fiscal Years ending November 30, 1919-1920. (Helena) p. 8.

The principle of this suggestion was embodied in law by the Legislative Assembly in 1921: "The fiscal year for the state purposes commences on the first day of July of each year, and ends on the last day of June of each year..."<sup>13</sup>

## 2. Subsequent Budget Making.

Since the first budget was drawn up the routine of budget preparation has been administered by the office of the State Accountant. Compiling the data which makes up the bulk of the budget document is currently the duty of the Assistant to the State Accountant. The routine of this budget making consists of three main steps—accounting for current expenditures, estimating the future expenditures, and estimating the revenue of the ensuing biennium.

### a. Accounting for Current Expenditures.

The first of these consists of receiving the claims for which warrants in payment have been issued by the Auditor's office and posting the amounts thereof in a general ledger, charging them to the particular department, fund, and appropriation upon which they were drawn. Each fund has a code number for identification. This general ledger gives an overall picture of the actual expenditures of the various departments, agencies and institutions of the State. The claims are further itemized and the specific purpose of their expenditures is posted in a "breakdown ledger" which shows expenditures in

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<sup>13</sup> Session Laws, 1921, Chapter 73, Section 1.

greater detail. This phase of the budget making is continuous throughout each current biennium for the number of claims is large<sup>14</sup> and each one must, of course, be analysed and posted separately. It is important to note that this particular step amounts only to the preparation of a resume' of state spending. Thus when the budget document is being prepared for printing and presentation to the Legislature, totals are transferred from the general and breakdown ledgers to show that the appropriations, actual expenditures and balances of the various departments and agencies have been during the preceding period. This is purely a statistical accounting. It is in no way post-audit of expenditures nor is it intended to be.

#### b. Estimating Expenditures and Revenue.

When the time<sup>15</sup> comes for estimating the expenses of the ensuing fiscal period the office of the State Accountant distributes

<sup>14</sup> "The number of claims approved, and processed is currently over five thousand a month." Statement of John Norman Mathews in interview, 1948.

<sup>15</sup> "Each department of the state government, and all state institutions and agencies requiring an annual appropriation from the state, shall present a request therefor to the state board of examiners on or before the 1st day of November of each year preceding a regular session of the legislative assembly." 295 R.C.M. 1935.

Also on the 1st of November the State Auditor is required to submit a report to the Governor in which he states, among other things, his estimate of State revenue for the forthcoming year. This provides another source of revenue information which can be used by the Board of Examiners if they wish to do so.

to all of the State agencies, departments, and institutions the request forms. These forms are simply large, ruled, ledger sheets upon which the name of the department or agency and the account concerned are typewritten along with a statement of the previous appropriation and figures showing the agency's spending during the current fiscal period. Space is provided for the departmental officer to make his appropriation request for the forthcoming biennium. In most instances this request will be the same or very close to the amount of the previous appropriation as shown on the form. If the request is a great increase over the appropriation of the previous period it is to be accompanied by a letter of explanation from the requesting officer directed to the Board of Examiners.<sup>16</sup> On the same form each department and institution submits an estimate of its revenue for the forthcoming fiscal period.

At this point of the budget making process one of its chief defects is apparent. By a law passed in 1937<sup>17</sup> the Board of Examiners is required to have taken prior to the beginning of each fiscal year an inventory of supplies, materials and articles "on hand or at the

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<sup>16</sup> In some cases such letters have been included in the final budget document which is printed up and distributed. An outstanding example appears in the 1925 Legislative Budget of the State of Montana (Helena, 1925) pp. 7-79.

<sup>17</sup> Session Laws, 1937, Chapter 40, Section 3.

disposition" of the units of the State government. The Board of Examiners then,

...must decrease the expenditures for the ensuing fiscal year by the amount or value of such supplies, materials, and articles so on hand or available capable of utilization in such ensuing period....

Under this provision the Board can effectively limit the device which some departments might be tempted to use of "holding over" unexpended balances of appropriations for use in the next biennium—by investing unencumbered balances in supplies before the end of the term and then requesting a full appropriation again for the next fiscal period—if the inventory is enforced and deducted from requests. This duty or at least the routine of the duty has been delegated to the Purchasing Department which calls for the inventories from the various governmental units. However the procedure is not rigidly enforced as can be readily seen by referring to the page on which inventories are tabulated in the budget document of 1947.<sup>18</sup> A good many blank spaces will be observed indicating that no inventory was turned in. The Assistant State Accountant regarded the page in its present form as virtually "valueless."

The State Purchasing Department does not seem to regard this default seriously and there is perhaps no reason why it should—the responsibility belongs to the Board of Examiners and as the budget

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<sup>18</sup> 1947 Legislative Budget of the State of Montana (Helena, 1947) pp. 75-79.

authority it should perform it. In many instances the inadequacies of the Montana financial system can be blamed upon the framework or the lack of adequate organization. In this case, however, an important fiscal power exists and is not being used to advantage.

After the various departments, institutions and agencies have filled in their requests the request forms are returned to the office of the State Accountant where they are assembled in order together with whatever correspondence may accompany them. They are then ready for submission to the Board of Examiners.

This preliminary budget—a collection of requests and estimates along with the data of previous expenditures—is next submitted to the Board of Examiners by the State Accountant. The Board is convened and its members go over the requests with the assistance of the State Accountant and the Clerk of the Board. They check each request submitted with the expenditures of the previous period and determine whether, in their judgment, the request is satisfactory. This procedure of appraising the requests of the various departments and agencies takes approximately one week's time.<sup>19</sup> If the Board of Examiners has any question about a request or estimate it may call the requesting officer to testify concerning the activities of his department and the request concerned.<sup>20</sup> Such a situation seldom occurs since the

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<sup>19</sup> Statement made by John Norman Mathews in interview.

<sup>20</sup> 297 R.C.M. 1935.

requests are in most cases similar to previous appropriations or any great change is accompanied by a letter of explanation as has already been pointed out. In most instances the appropriation request submitted by the department officer is accepted. Very seldom is it cut down.<sup>21</sup> In case a change is considered essential the Board indicates to the Accountant the amount which should be requested. The Accountant strikes out the previous figure and the new one is written in on the request form. The department or agency concerned is so notified. In the event that such a change is downward the department will still have recourse to the Legislature.

One of the desirable functions of a budget, as has been stated, is that it should set up a plan showing what the estimated expenditures and anticipated revenues are for a period. Under an ideal system expenditures should be held under a conservative estimate of revenue. Such "regulation" demands study and an intimate knowledge of state expenses and potential income. This is of course the function of the budget making authority. Under Montana's system, when the Board of Examiners is considering the budget document it makes a comparison of the totals of expenditures and revenues. If, in their opinion it is impossible or inadvisable to hold expenditures proposed under revenue expected, then they must recommend to the Legislature that more income be provided through taxation or other means.

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<sup>21</sup> John Norman Mathews indicated that the requests were more often raised than lowered. The request forms of previous years were not available for the verification of this observation.



Once the requests have been approved by the Board of Examiners the approval is noted on the request form by the Accountant and the sheets are returned to his office where the figures are taken from them and the final document is edited for printing.<sup>22</sup>

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<sup>22</sup> Printing and distribution of the budget document is the responsibility of the Board of Examiners: "The state board of examiners shall have printed before the tenth day of each session of the legislative assembly, the budgets provided for herein, and shall distribute copies of the same to the members of the legislative assembly, to all the state departments, institutions and agencies, and two copies to the library of congress at Washington." 303 R.C.V. 1935 as amended by Session Laws, 1937, Chapter 45, Section 2.

## CHAPTER V

## BUDGET MAKING--Continued

## 1. Legislative Consideration of the Budget.

When the budget document has been printed it is ready for presentation to the Legislative Assembly. Copies are distributed to all members of the Legislature by the tenth day of the session.<sup>1</sup> While the Legislature must use the budget document as a basis<sup>2</sup> for appropriation legislation this is a very broad qualification and there is no assurance that it will be closely followed.

The budget is considered by the Appropriation Committee in the House of Representatives and the Finance and Claims Committee in the Senate. In making their study of expenditures these committees may call any officer or individual in to testify before them in connection with the budget, or any requesting officer may appear before them of his own initiative on behalf of his own department.<sup>3</sup> The committees may, further, conduct special investigations of the various requesting activities through personal visits whereby they go over the departmental procedures and activities and determine to their own

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<sup>1</sup> 303 R.C.M. 1935.

<sup>2</sup> 299 R.C.M. 1935.

<sup>3</sup> 300 R.C.M. 1935.

satisfaction the validity of the request made, the efficiency of the agency and the worthiness of its existence.

Upon occasion, the Board of Examiners has, in connection with drawing up the budget, composed a Budget Bill<sup>4</sup> for presentation to the Legislative Assembly.<sup>5</sup> The purpose of such a measure was to facilitate the appropriations committees in their work of drawing up the proposed law. Such action was not too well received on the part of the lawmakers, perhaps out of a feeling that their powers were being in some way encroached upon, and hence they drew up their own budget bill or so revised the one suggested that it was completely changed. Consequently, this procedure has been dropped by the Board of Examiners at least for the time being.

The language of the Budget Act might seem to indicate that only one general appropriation measure is passed by the Legislature and that any other laws dealing with the appropriations are supplementary.<sup>6</sup> This is not true for appropriations are passed by a series

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<sup>4</sup> Montana, Proposed Budget Bill (for 1935-1937) (Helena, 1934), and Proposed Budget Bill (for 1937-1939) (Helena, 1936).

<sup>5</sup> They are, in fact, required to do so by law: "The recommendations of the state board of examiners shall be in the form of a budget bill, showing the amounts recommended for all the proposed appropriations." 298 R.C.M. 1935.

<sup>6</sup> 298 R.C.M. 1935.

of acts, each one dealing with a particular classification of governmental activity. The appropriations passed by the 30th Legislative Assembly were these: Elective Officers (House Bill 260); Boards and Departments (House Bill 437); University Institutions (House Bill 432); Custodial Institutions (House Bill 439); Post War Construction (House Bill 3); and a whole series of smaller bills (21 in number) covering various miscellaneous activities. Many of these latter were so-called supplementary appropriations.

The Legislative course taken by an ordinary general appropriation measure is as follows:

(1) Study is made of the budget document by the House Appropriations Committee and Committee on Revenue and Taxation. The Senate Finance and Claims Committee or subcommittees may be invited to sit in for such meetings. Following study and investigation an appropriation bill is drawn up and introduced into the House. The title of the bill is entered upon the House Journal. This is the first reading. The bill is then referred back to the Appropriations Committee. The Committee will return the bill to the House for the second and third readings, debate and final vote.

(2) The measure is then transmitted to the Senate where it will be entered upon the Journal for the first reading and referred to the Committee on Finance and Claims. This Committee will conduct its own study of the bill, and return it to the Senate for second and third readings and final vote just as in the House.

(3) If the Senate should make any changes in the bill as presented to it by the House the measure must then be returned to the House for reconsideration. At this point a joint committee of the two branches will be set up to compromise the differences between them. When the identical bill is finally agreed upon in both branches of the Legislature and passed by a majority of each it is sent to the Governor for his approval.

(4) The Governor may approve the measure and sign it whereupon it becomes law;<sup>7</sup> or he may hold it unsigned for five days, during which time the Legislature is in session, and it becomes law without his signature.<sup>8</sup> On the other hand, the Governor may disapprove of the entire measure or a part of it; in this case he may exercise his veto power.<sup>9</sup> Such sections as he approves become law and are effective and those which he disapproves must be returned to the Legislative Assembly within five days, if it is still in session, accompanied by a message stating his objections.

(5) In the latter instance the Legislative Assembly must reconsider the vetoed items in the same manner as any other vetoed bill.<sup>10</sup>

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<sup>7</sup> 85 R.C.M. 1935.

<sup>8</sup> 83 R.C.M. 1935.

<sup>9</sup> See page 32.

<sup>10</sup> 85 R.C.M. 1935.

If the two branches of the Assembly repass them by a Constitutional majority they become law without the signature of the Governor.<sup>11</sup>

In some states the item veto power is legally used by the governor not to completely negative a particular section of an appropriation bill, but to cut down the amount of an appropriation provided in such section.<sup>12</sup> Arguments can be found in the writings of public administrators both for and against such a system. In Montana the item veto cannot be used in this manner. The Supreme Court of the State has ruled that,

...the governor...may not scale any particular item or items by deducting a certain per cent of the amount appropriated by the legislature in a bill which, because of adjournment, could not be returned to it for further action, since by doing so he would be exercising creative legislative power and usurping the function of the legislative assembly.<sup>13</sup>

Even if the Legislature should repass such vetoed sections over the Governor's negative action it is possible that the actual use of the money provided will not be allowed, for the Board of Examiners of which the Governor is a member must approve of all capital expenditures and so has the last word in at least that sphere.

At any rate the item veto power is important as an executive instrument in Montana financial legislation. It is a summary check

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<sup>11</sup> 86 R.C.M. 1935.

<sup>12</sup> Roger H. Wells, "The Item Veto and State Budget Reform," American Political Science Review, November, 1924, pp. 782-791.

<sup>13</sup> Mills v. Porter et. al., (Veto Case) 69 M 325.

which the Governor, on his own behalf or for the Board of Examiners, may exercise over the legislative branch. For while the veto is effected by the Governor his action may be a considered one motivated upon the advice of the other members of the State Board of Examiners.

(6) At the close of the legislative session the State Accountant under the direction of the State Board of Examiners compiles all of the appropriation laws and they are printed in pamphlet form for distribution to all parties concerned.

## 2. The Budget System Criticized.

It should now be clear that the budget document in its final form is a detailed compilation of all State expenditures for the previous biennium along with the requests of the various governmental units for appropriations and estimates of revenues for the forthcoming fiscal term. It thus amounts to a summary of statistics rather than a centralized financial plan. Little or no effort is made to investigate in detail the requests of most departments by the Board of Examiners. The requesting officers are relatively free in the administration of their activities: they determine what their requested appropriations shall be from their anticipated needs. This situation arises from several important factors involved in the following specific criticisms:

1. The Board of Examiners--the budget making authority--is an overburdened board which does not itself draw up the budget document. Its total load of duties is ridiculously great. Even if the

Board were especially desirous of conducting a far reaching investigation into financial affairs and making use of the budget as a comprehensive plan it could not possibly find the time to do so.

2. The budget making authority is composed of three members of the Executive Department of the State each elected to his office. It is likely that they will not all be of the same political party and thus friction may develop between them. It is recognized by authorities on public finance that a commission directed budget preparation is second best to a budget document prepared under the leadership of one executive official, i.e. the governor.

3. The State Accountant who has the delegated responsibility of compiling the budget document shifts the duty further to his Assistant.

4. The State Accountant has no authority to interview and investigate the requesting activities and report his findings to the Board of Examiners. If he were given such authority it would be inconceivable that he could carry out the investigations when he presently is unable to perform all of the duties required of him by law.<sup>14</sup>

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<sup>14</sup> The State Accountant is required "to examine at least once every three months, the books and accounts of the treasurer and secretary of each of the following institutions, to-wit: university of Montana, Montana state normal school..."(etc., all told eleven institutions). He is now able to make such a complete check only once a year in spite of the requirement of law. - Statement of John Norman Mathews in interview.



5. Through his auditing activities the State Accountant may very likely have information which he can offer to the Board of Examiners at the time of budget consideration; but, being an appointee of that Board and holding his office at their pleasure he must be careful in presenting criticisms and suggestions to them which might be "political" in nature.

6. Requests are drawn up by various departments, agencies and institutions. These are made without reference to the overall picture of expenditure or income. Such requests are often accepted without close study on the part of the Board of Examiners.

7. Enforcement of the requirement that the inventory value of the requesting agency be allowed or deducted from the request is inadequate. Thus an agency which is approaching the end of a biennium with a surplus fund which ordinarily would revert may hurriedly "invest" it in supplies with the effect of increasing their next appropriation by that amount.

8. There is no assurance that the Legislative Assembly will follow the proposed budget closely. As determined individualists its members may at times be apt to feel that if existing laws counter actions which they wish to perform or have performed, "they made them and they can change them."

9. Though the Legislature provides for appropriations and income it has no auditor responsible solely to it to ascertain that its provisions are carried out.

10. Once the budget is drawn up and appropriations are passed the budget authority makes no requirement that the various agencies, institutions, departments, and boards plan their spending on a quarterly or semi-annual basis as a facility to budget control.

## **PART III**

### **Control**

### Introductory Comment

It has been previously pointed out in this study that a budget system has two major branches, budget making and budget enforcing. As has been seen, defects in Montana's budget making are serious, but it is in the second phase of the budget system where the State's machinery is most inadequate.

Budget enforcing is usually spoken of as "control." Text writers are generally agreed that under an ideal system the control activities should keep a central running account—"historical accounting,"<sup>1</sup>-- of the expenditures of all departments, agencies and institutions of government on an accrual basis so that an exact statement of any unit's spending is available at all times. Second, strict supervision is exercised over all spending to ascertain the necessity of the purchase, funds unencumbered, and the purpose for which the items bought will be used. Working closely with this particular controlling unit there should be a central purchasing agent which does state buying, invites bids and lets contracts. Third, there must be an internal pre-audit of claims made against the government for payment as well as of the business management of the various government units. And, finally, there should be external post-audit.

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<sup>1</sup> James L. Dohr, Howell A. Ingraham, Andrew L. Love, Cost Accounting (New York, 1924) p. 4.

There are several offices standing at the top of Montana's governmental hierarchy which might appear to exercise a part of these control functions. It should be kept in mind that no provision was made in the Budget Act for administration of the budget once adopted. What control there is is largely the old fiscal system which was relatively unchanged with the addition of the budget "appendage."

The offices which appear to have some measure of control are the State Board of Examiners, State Auditor, State Treasurer, State Examiner, State Accountant, and the State Purchasing Agent. The legal basis and duties of each shall be investigated separately and then a practical example of expenditure control shall be traced through the various offices.

## CHAPTER VI

## THE STATE BOARD OF EXAMINERS

## 1. Organization.

Standing at the top of all the boards, commissions, agencies and, in some ways, of the executive departments is the Board of Examiners. It is a Constitutional Board—created by the Constitution of Montana.<sup>1</sup> Its composition and primary function is also stated by law:

The governor, secretary of state, and attorney general 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. No claim against the state, except salaries and compensation of officers fixed by law, must be passed upon by the legislative assembly without first having been considered and acted upon by said board.<sup>2</sup>

The Governor is the president of the Board and the Secretary of State acts as the Board's secretary.<sup>3</sup> Meetings are to be held at the seat of government on the third Monday in each month, and at "such other times as the president may call it together."<sup>4</sup> As it works practically the Clerk of the Board "calls" the meetings and

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<sup>1</sup> Article V, Section 20.

<sup>2</sup> 232 R.C.M. 1935.

<sup>3</sup> 233 R.C.M. 1935.

<sup>4</sup> Ibid.

the Board sits in session approximately six hours per week.<sup>5</sup> This, of course, may vary, depending upon circumstances. The Board is required to keep a record of its proceedings and all claims must be entered on the minutes before they are acted upon.<sup>6</sup> The Board has the legal power to establish rules and regulations<sup>7</sup> in writing for its own government, and while it does from time to time make rulings concerning activities under its cognizance they have never been organized and printed. They are recorded only in the minutes of proceedings or in occasional letters sent to various State activities.

Each of the members of the State Board of Examiners holds his position ex officio the office to which he was elected. Each of them has the duties of his own office to perform. In addition, they are ex officio members of various other boards.<sup>8</sup> Time and thought must be divided between all of these duties if any of them is to be administered.

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<sup>5</sup> Statement of W. L. Fitzsimons made in interview.

<sup>6</sup> 234 R.C.M. 1935.

<sup>7</sup> 235 R.C.M. 1935.

<sup>8</sup> The Governor, for instance is a member of the Board of State Prison Commissioners, Board of Land Commissioners, Depository Board, State Board of Education and State Board of Commissioners of Insane, Deaf, Dumb and Blind. Similarly the Secretary of State serves on the Board of State Prison Commissioners, Board of Pardons, Land Commissioners, Board of Commissioners of Insane, Deaf, Dumb and Blind, and State Sealer of Weights and Measures. The Attorney General is a member of the Board of Pardons, Land Commissioners, Education and Commissioners of Insane.

To handle the office routine of the State Board of Examiners there is a Clerk and Assistant Clerk of the Board with a supporting staff who handle claims, insurance policies, construction plans, and other material placed under the cognizance of the Board of Examiners by law. It is the Clerk of the Board who bears the brunt of the work load, the responsibility of passing along routine matters to other offices or handling them himself and bringing more important affairs to the direct attention of the Board. The Clerk, too, is an overburdened official serving not only as Clerk of the Board of Examiners, but also of the Board of Pardons, Board of State Prison Commissioners and the Board of Commissioners for the Insane.<sup>9</sup>

## 2. General Duties.

The scope of the legal duties and responsibilities of the Board of Examiners is so broad that it offers ample material for a separate study. A number of them shall here be sketched to demonstrate that the Board's combined duties exceed the bounds of sound administrative principle and constitute a work load which cannot be efficiently performed. This is one of the outstanding defects of the

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<sup>9</sup> The latter three boards are referred to as the "Consolidated Boards." Rather amusing in its wording is the law stating, "The clerkship of the state board of examiners and the clerkship of the consolidated boards are hereby consolidated..." 123.1 R.C.M. 1935.



present system. The Board appears to have been a sort of catch-all for the performance of executive and administrative duties which the Legislative Assembly has established from time to time.<sup>10</sup>

Some states and the federal government have civil service commissions or systems of civil service for the classification of civil service employment. In Montana the responsibility for what "system" there is in this important sphere is assigned to the Board of Examiners. The State civil executive officers, boards, commissions and departments have the power to appoint their own assistants, clerks and stenographers. But the number and the compensation of such appointees is to be fixed by the State Board of Examiners.<sup>11</sup>

The scope of such power can readily be realized. It goes almost without saying that the agency responsible for determining the number and compensation of government employees should have ample opportunity to study the functions which they perform and the organization within which they perform them. That the Board of Examiners does

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<sup>10</sup> The apparent disregard which Montana's lawmakers have held toward efficient administrative organization and reform is a grim commentary on their collective sense of administrative procedure. "A great deal of past misgovernment may be attributed to the popular and official ignorance of what needed to be done as well as lack of skill in how to do it. Existing confusion in government was bound to result because of the absence of orderly and scientific procedure. A popular desire for efficient government, even when supplemented by official intention to govern well,... does not lead to the desired goal in the absence of scientific methods of administration." Frank Amarius Hoff, Trends In Municipal Finance Since 1900 (Lincoln, Nebraska, 1936) p. 234.

<sup>11</sup> Session Laws, 1943, Chapter 30.

not have time for adequate study is seen in the discrepancies between salaries of State employees and the possible overhiring of "politically acceptable" workers in various departments. Since the Board's opportunity to exercise far reaching investigative power is nil it remains pretty much up to the word of the requesting office to determine its own needs.

In passing, it should be pointed out that the Legislature does have some control over the Board of Examiners in this respect, for the law states that "the compensation paid to the several assistants, clerks and stenographers for all civil executive officers, boards, commissions or departments shall not exceed the maximum specified in the annual appropriation bill passed by the legislative assembly for the year specified."<sup>12</sup>

Among the specific control duties of the Board to be discussed below is one requiring that all travel expenses of State officers who travel in connection with their official duties are to be checked by the State Board of Examiners. Arising from this requirement are investigative duties which have to do more with personnel administration than directly with expenditure control. For every such person who travels for the State the Board is to keep a separate file in which are held the individual's reports of his activities and the enumeration of his expenses. Every three months the Board is required

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<sup>12</sup> 274 R.C.M. 1935.

to investigate these files and note in its minutes any apparent duplications of the services of one person with those of another. In case such duplication is found recommendations are to be made for the elimination of services of persons unnecessarily employed or to consolidate the work of two or more persons.<sup>13</sup>

There is no question but what such measures as these should be exercised over personnel. Rather, the question is, should they be administered by the Board of Examiners and is that Board able to deal adequately with them? The answer is negative.

A more recent measure constitutes the Board of Examiners as custodian of all State-owned motor vehicles with the exception of those of the State Highway Department and the State Highway Patrol.<sup>14</sup>

This act gives the Board control of all motor vehicles owned or which shall subsequently come into the possession of the State, and the Board has the authority to assign the use of these vehicles to State officers, departments and agencies under whatever rules it may prescribe. It is to approve the purchase of all new motor vehicles required by any branch of the State government. While a provision of this same act gives permission to delegate much of the routine responsibility of these requirements and others not here mentioned to the

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<sup>13</sup> 459.4 R.C.M. 1935.

<sup>14</sup> Session Laws, 1941, Chapter 93.

State Purchasing Department, nevertheless it is one more duty which must be performed by the Board of Examiners. The problem of keeping all such vehicles insured in itself presents a considerable task to be performed by the Clerk of the Board.<sup>15</sup>

Although the general control and supervision of the State University, State Normal College, College of Agriculture and Mechanical Arts of Montana, the Eastern State Normal School, State Orphan's Home, State Industrial School, and the State Vocational School for girls is vested in the State Board of Education<sup>16</sup> the supervision and control of all expenditures of all moneys appropriated or received for the use is the duty of the State Board of Examiners. Accordingly, the Board of Examiners shall:

...let all contracts, approve all bonds for any and all buildings or improvements, and shall audit all claims to be paid from any moneys, other than that received under and by virtue of the acts of Congress...but said...board...shall have authority to confer upon the executive boards of such institutions such power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries or other expenses incurred in connection with said institutions, as may be deemed by said...board...to be the best interest of said institution.<sup>17</sup>

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<sup>15</sup> It has been suggested that the State might dispense with the insuring of its properties altogether and in some manner act as its own "insurance agent." The possibilities of such a procedure might prove to be an interesting study--determining the feasibility of the plan and the possible savings involved. It would unquestionably be opposed by insurance companies!

<sup>16</sup> Chl R.C.M. 1935.

<sup>17</sup> 850 R.C.M. 1935.

The powers and duties of the Board of Examiners here defined are almost identical with the general financial functions assigned to the Board; but in this case it is a specific assignment making the Board of Examiners the business director of State educational institutions.

These illustrations are given solely to show the nature of some of the duties imposed upon the Board of Examiners because it operates as a catch-all of administrative activity involving policy making and expenditures. They are in no way definitive. Other examples might be cited in the Board's control over the State Sanitarium, its great task of post-war planning and construction, and general architectural planning activities. Taken together they indicate that the State Board of Examiners is too burdened with miscellaneous activities to adequately perform the task with which this study is concerned—budget and expenditure control.

### 3. Control Activities of the Board of Examiners.

Turning to the latter it is found that the Board's activities can be classified into two major categories: (1) "supervisory" functions in which some control may be exercised over the expenditures of the various governmental activities and the review of claims against the State; and (2) "initiative" functions in which the Board, acting as a spending agency in its capacity of "furnishing board," has cognizance of expenditures for major capital, building and operating expenses.

### a. Initiative Functions.

The members of the State Board of Examiners are members, ex officio, of the State Furnishing Board or board of supplies.<sup>18</sup>

Summarized, the duties of the Furnishing Board are these:

1. Establishment of rules for the government of the Board in relation to all contracts.
2. To contract for the furnishing of all stationery, printing, binding, paper, fuel, lights, repairing of books and other necessary supplies to be used by the Legislative Assembly and all other departments of the government.
3. To hire, furnish and keep the furniture repaired in offices for all State officers and the Legislative Assembly.
4. To have deposited in the office of the Secretary of State all stationery, books, and other articles and supplies on hand for issuance to any officer upon requisition.
5. To have an inventory taken of all articles on hand and contracted for at the end of the fiscal year or at any other time they see fit.
6. To examine the accounts and vouchers for the supplies in part 5 above.<sup>19</sup>

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<sup>18</sup> "The governor, secretary of state, and attorney general of the state of Montana are hereby constituted ex officio a furnishing board with the powers and duties hereinafter specified." Political Codes, 1895, Section 702. "The Board of examiners is also a board of supplies and furnishing board." 255 R.C.M. 1935.

<sup>19</sup> Duties here enumerated are contained in 256 R.C.M. 1935.

These "furnishing" duties deal chiefly with contracting for goods and services and are of great importance, involving wide responsibility in planning and action.<sup>20</sup> Much of the routine is now performed by the State Purchasing Agent.<sup>21</sup> It seems likely that the State Purchasing Agent could perform all of them more adequately than the State Board of Examiners which is not necessarily composed of qualified business men. There is no reason why the State Purchasing Department could not perform them as responsibly as the Board of

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<sup>20</sup> Before letting any contract the Board must advertise for twenty days in two daily newspapers, one printed at the seat of government and the other printed elsewhere in the State, specifying in the advertisement the kind and amount of each article required. Sealed proposals in answer to the advertisements are to be delivered to the Furnishing Board containing a sample and description of each article. Proposals so submitted are opened in the Board's office at twelve o'clock noon of the day specified in the advertisement and the contract is to be awarded to the lowest responsible bidder at that time. All contracts made by the Board must be approved by the Governor and the State Treasurer. These requirements apply to merchandise and material which is needed by the government. The requirements of law for bids on State buildings are very similar to them. Bids must be called for on any building which will cost over \$500.

<sup>21</sup> Laws assigning the duties of the Furnishing Board and the State Purchasing Department are in several instances very similar giving rise to duplicate responsibility. It would seem that a wise action would have been to turn over the duties of the Furnishing Board to the Purchasing Department upon the latter's creation but this was not done and instead of repealing the similar laws the following section was passed in 1927: "Nothing herewith contained [in duties of the furnishing board] shall in any way be construed as altering, modifying or changing the laws providing for or relating to the state purchasing department, or the purchasing agent of the state." 259.6 R.C.M. 1935.

Examiners and the service would be more directly in line with its special qualifications. As a matter of fact, an independent agency such as the Purchasing Department might make more efficient purchases based on greater study than a commission composed of elected officials who are subject to the influence of "political" pressures.

In these activities there are elements of control, but in so far as effecting the budget as a plan, they are of negligible importance and could be performed by other agencies to the State's advantage. It is in the Board's functions which have to do with overseeing the activities of the various other departments, institutions and agencies that control, such as it exists in Montana, comes more directly into the picture.

#### b. Supervisory Functions.

The main regions in which supervisory control can be exercised are: (1) checking the necessity, legality, effectiveness and availability of funds for proposed spending--ascertaining that it is in harmony with the budget plan; this necessitates centralized accounting; (2) pre-audit--checking claims against the government prior to their payment to determine whether or not the charges for goods received are just, that the goods or services were used for the best interests of the state and that such use was efficient; and (3) post-audit which, like pre-audit, looks into the use of purchases, the efficiency of offices, bookkeeping, and the adequate administration of laws dealing in any way with fiscal affairs. Post-audit is the proper function



of the legislative branch.<sup>22</sup> Which, if any, of these functions are performed by the Board of Examiners?

The "supervisory control" activities of the Board of Examiners may be classified as (1) supervision of the budget "periods of appropriation;" (2) approval of requisitions for the purchase of capital goods; (3) review of claims against the State for which there are appropriations; (4) review of claims for which there are no appropriations; (5) approval of special instances of expenditure involving printing, personnel, transportation of criminals and the publication of reports of various State offices and agencies; and (6) supervision of contingent revolving funds. The first of these deals with affecting the plan of the budget though in only the broadest fashion. The second is an instance of real expenditure control for here the Board may look into the wisdom and necessity of the purchase as well as its legality and the availability of funds. The last four are in the nature of audit and so may contribute to control depending upon the policy and effectiveness of their administration.

#### (1) Supervision of "Appropriation Periods."

The Legislative Assembly of Montana normally meets once every two years. This means that appropriations must be made for two-year periods. This biennium has been divided into fiscal years the dates

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<sup>22</sup> Leonard D. White, Introduction to the Study of Public Administration (New York, 1939) p. 250.

of which have been changed several times as has been indicated, the fiscal year now being from July 1 to June 30. When the Legislature passes an appropriation act (other than a deficiency appropriation or a sum for a special purpose) it does not set up a lump sum for the two-year period, but, rather, specifically states the amount appropriated for each fiscal year of the biennium.

Ordinarily no State officer can contract any liability or indebtedness for his office or the institution under his direction in excess of the amount appropriated for its expenditure during a given year of the biennium.<sup>23</sup> Spending officers and agencies cannot always hold their expenditures within the appropriated amount however because of unforeseen circumstances which may arise necessitating

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<sup>23</sup> 269 R.C.W. 1935. The legislative and judicial branches have a way around this qualification. As a lawmaking authority the Legislature can simply pass a law appropriating more money to its own use without regard for the opinion of any other branch of government, particularly the budget authority. Such an action would of course be "legal." The judicial branch—the Supreme Court—has upon occasion sought to spend beyond its appropriation. In one case the Supreme Court ordered a table for the State Law Library. Its funds for capital goods had already been expended. After delivery of the table the claim for payment was presented and approved for payment by the Board of Examiners. When the claim was presented to the State Auditor he refused to issue a warrant because the appropriation for capital goods had been depleted. The Court then issued an order demanding that the Auditor issue the warrant. In this way the table was procured.

greater expense than anticipated. When a justifiable situation of this nature arises it is reasonable and desirable that some means be provided whereby the unit may be authorized to obligate the State beyond the appropriated amount.

Since 1907 the State Board of Examiners has had the power to authorize indebtedness beyond an appropriation, the power being granted in the following language:

No state officer, state board of trustees or managers or commissioners shall have any authority to, or shall contract any liability or indebtedness whatever in excess of the amount appropriated to such officer, board of trustees, or managers or commissioners, or for the office, institution commission or organization under his or their management or control, without previous authorization from the state board of examiners.<sup>24</sup>

This law continued in force after the adoption of the Budget Act. In 1937 it was amended and revised being made applicable more specifically to emergency situations occurring from over-crowding in "penal, custodial or charitable" institutions. In case of "unforeseen and unanticipated emergency" arising in any other State institution, department, board, commission or bureau where the entire income of the institution concerned will be insufficient for its legal functions of the year, the State Board of Examiners may "authorize an expenditure to be made during such year and for such purposes in such an amount in excess of such income for said year as said board may deem necessary

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<sup>24</sup> Session Laws, 1907, Chapter 26.

and required."<sup>25</sup> When such a situation occurs the Board must report to the next Legislative Assembly the amount expended in indebtedness--the liability incurred--and request that a deficiency appropriation bill be passed to take care of the sum.

This is a necessary and desirable provision. No plan can foresee all eventualities and so there must be a means of meeting contingencies. In some cases budget estimates must be revised upwards. Where the budget authority is closely aware of spending activity it seems reasonable that there is relatively little chance that such revising power will be abused. Obviously, however, one purpose of budget making is to foresee as many situations of this kind as possible and obviate the necessity of frequent deficiency appropriations which might have been avoided by more adequate planning or expenditure supervision.

In some states all spending agencies, departments and institutions are required to submit a detailed plan of work and expenditures proposed for the ensuing year, half year or quarter to the budget authority. In this way the units are forced to plan ahead for their spending activities and the plans must naturally be set up within the limits of the budget document. By checking the progress of each unit on these detailed plans the unit's adherence to the budget can be more

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<sup>25</sup> Session Laws, 1937, Chapter 40. See Report and Official Opinions of Attorney General of Montana (Helena, 1942) Vol. 19, Opinion 269, p. 439.

closely controlled. In Montana no such specific, periodic planning is required or exercised under the present procedure.

Thus, if a board spends too rapidly in the first year of the biennium and is about to exceed its appropriation it may go to the Board of Examiners and request to spend from the appropriations for the second fiscal year of the period. If the Board gives its approval the institution may start in on its second year appropriation. If it should spend beyond that in the second year (with the Board's approval) the Board of Examiners must request a deficiency appropriation from the Legislative Assembly to cover the indebtedness. This can be a serious loophole in the budget process.

The principle stated above bears repetition: a purpose of budgeting and budget control is to avoid over-expenditures by keeping close check on the spending activity in relation to appropriations and funds available. Here the Board of Examiners is an inadequate controller for it is unable under the present system to efficiently oversee the spending of the State agencies and institutions.<sup>26</sup>

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<sup>26</sup> In 1947 there were 12 deficiency appropriations passed. It is particularly interesting to note that three of these were made for the offices of the members of the Board of Examiners. Session Laws, 1947, House Bills 191 and 211.

(2) Supervision of Expenditures for Capital Goods.

A major source of potential control power in the hands of the State Board of Examiners is contained in the following section:

...no purchase shall be made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof.<sup>27</sup>

In other words, this law states that no capital goods or equipment shall be purchased by any unit of the State government regardless of how great an appropriation may have been passed for such purchase without the specific approval of the State Board of Examiners.<sup>28</sup> This gives the Board of Examiners the final say as to what major capital expenditures shall be made for and to what amount. Its policy in this regard can be one of holding departments at or under the appropriations set up from the budget or its members may base their considerations upon political expediency or other factors. Even if control in this respect were taut there would nevertheless be a large group of expenditures left solely to the discretion of the spending units in that no such control is imposed upon operating expenses.

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<sup>27</sup> 287 R.C.M. 1935 as amended by Session Laws, 1939, Chapter 51, Section 1.

<sup>28</sup> In many cases where the purchase of large orders of operating goods as distinct from capital goods are pending the Purchasing Department will submit the request therefor to the Board of Examiners as a matter of good form. Statement of Mr. Frank Francis, Assistant State Purchasing Agent.

### (3) Audit Activities.

#### (a) Claims for which appropriations have been made.

Of first importance in a government control system is the audit of claims against the government for which appropriations have been made. Montana law is quite clear in this case:

Any person having a claim against the state, for which an appropriation has been made, may present the same to the board in the form of an account or petition, and the secretary of the board must date, number, and file such claim, and the board must allow or reject the same in order of its presentation. The board may for cause postpone action upon a claim for not exceeding one month.<sup>29</sup>

Accordingly, any bill or account (here called a claim) against the State for any purpose must, before being paid, be approved by the Board of Examiners. At this point, that is, when a claim is presented to the Board of Examiners, an audit should be exercised to ascertain whether or not the amount of the charges is correct and in line with prices being charged non-governmental enterprises for the same goods or services, whether the item for which charge is being made has been received, and whether the purchasing unit of government had the authority to make the purchase. Such of this as is performed under Montana's present system is done by the department making the purchase before the

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<sup>29</sup> 238 R.C.M. 1935.

claim is ever presented to the Board of Examiners.<sup>30</sup>

If such a claim is approved by the Board its members "must endorse thereon, over their signatures, 'Approved, for the sum of \_\_\_\_\_ dollars,' and transmit the same to the office of the state auditor."<sup>31</sup> If the Board should, on the other hand, disapprove such a claim it must file the claim with its records accompanied by a statement explaining the disapproval.<sup>32</sup>

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<sup>30</sup> Decentralisation of this nature is perhaps attractive as an ideal, and if officials are devoted to economy, honesty, and co-operation between various activities it may function reasonably well. But a budget system seeks to set up an over-all plan and if it is to be adhered to there must be review of the spending and receipts by the office responsible for the plan. In this respect it seems that the Board of Examiners fails as a budget authority.

Expenditure control in government is a rather recent development, but its principles are now fairly well outlined. The objectives as such seem to have been recognized by Montana statesmen as is evident in the Budget Act, and supporting agencies, but the system for achieving them has not been reasonably developed. One can observe, at least in so far as law is concerned, that Lutz's statement of such a situation is a fairly apt description of the attitude toward the budget in Montana: "The idea of controlling public expenditures is comparatively new, since the weight of this expenditure has only recently become such as to command serious attention. The earlier text writers on public finance spoke of 'laws of expenditure increase,' which indicated that they thought of this tendency as something certain and immutable." Harley L. Lutz, "The Control of Public Expenditures," The Tax Digest (Nov. 1931) pp. 366-374.

<sup>31</sup> 239 R.C.M. 1935.

<sup>32</sup> 240 R.C.M. 1935.



(b) Claims for which no Funds Have Been Appropriated.

In some cases a claim may be presented for which there has been no appropriation made. If the Board approves such a claim after auditing it, it must transmit the claim to the Legislative Assembly, along with a statement of its approval and it will then be up to the Legislature to pass an appropriation or deficiency appropriation in its payment.<sup>33</sup> Similarly, unsettled claims which have not been provided for by law must be transmitted to the Legislative Assembly with the facts concerning the claim.<sup>34</sup> Such a claim must be presented to the Board at least two months before the meeting of the Legislature. On the first Monday of November preceding the meeting of the Legislative Assembly the Board must hold session for examining this class of claims and must have a notice published in some newspaper at Helena stating what claims have been filed with them and the order in which the Board will proceed to examine them.<sup>35</sup> At the time that examination is made the Board may hear evidence in support of or against such claims and from their examination they arrive at the facts from which they draw up their report to the Legislature concerning an appropriation in the claim's payment. A list of such claims rejected must be published in a newspaper at the

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<sup>33</sup> 241 R.C.M. 1935.

<sup>34</sup> 242 R.C.M. 1935.

<sup>35</sup> 243 R.C.M. 1935.

seat of the government and the time stated for the next meeting of the Legislature for that is the court of last resort to which the claimant may appeal.

The Board is not to consider for a second time a claim which it has disqualified or which has been rejected by the Legislature unless such facts are presented to the Board which offer ample grounds for reconsideration.<sup>36</sup> And no member of the Board must act upon any claim in which he is personally interested or which has to do with expenditures incurred by his office—he is not even to be on hand when such a claim is presented.<sup>37</sup>

These are the general provisions concerning the approval of claims. In several instances the law is even more specific.

### (c) Printing.

In contracting for State printing the Board is "not to allow or approve for payment any claim against the state of Montana by any publisher or printer," unless the printer has attached to his claim an affidavit stating the price or rate of the publication for which the claim is made and that such price is not in excess of the "minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of

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<sup>36</sup> 247 R.C.M. 1935.

<sup>37</sup> 246 R.C.M. 1935.

insertions." The same section makes it unlawful for any concern to attempt to charge the State of Montana for any publication in excess of the minimum going rate normally charged any other advertiser.<sup>38</sup>

(d) Travel Claims of State Employees.

Mention has already been made of the duty of the Board of Examiners which merges a responsibility over personnel and financial matters. Every person engaged in any service for the State of Montana who must travel full or part time is required to make an itemized statement "tersely stating," in what capacity he was engaged on each day and must present the statement at the close of each month to the Board of Examiners. The Board is to audit and approve the statements before any claim for the money so spent can be allowed.<sup>39</sup>

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<sup>38</sup> 279 R.C.M. 1935.

<sup>39</sup> 459.1 R.C.M. 1935 as amended by Session Laws 1941, Chapter 92. A separate act of similar intent applies directly to judges: "As soon as his services in connection with the trial or hearing are concluded, the judge shall certify in detail the amount of money necessarily and actually expended by him for his traveling expenses and board and lodging, as above specified, and shall file the claim for such services with the state board of examiners, who shall audit it, and if found correct by them, they shall transmit the claim to the state auditor, with their approval indorsed thereon, and the state auditor must draw his warrant for the amount so approved in favor of the claimant, or his assigns, in the order in which the same was approved." 8017 R.C.M. 1935.

(e) Claims for the Transportation of Criminals.

Yet another specific control of expenditures is established in connection with the transportation of criminals to the State Prison. The expenses necessarily incurred in the performance of such a duty by a county sheriff must be audited by the Board of Examiners and authorized by it before payment is made to the officer.<sup>40</sup>

(f) Reports of State Agencies.

Before the report which may be required of any State office, board, bureau, commission or department shall be printed it is to be presented to the State Board of Examiners which has the power to grant or deny permission for its printing.<sup>41</sup> This requirement is set up as a control over expenditures for the Board is to "authorize the printing and publication of such reports only when it deems the usefulness of the reports in the administration of government of the State to justify the expenses." Conversely to the power of granting or denying requests from such offices to publish reports the Board may require that a particular report be printed without the subject office having ever made request of the Board for such permission.

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<sup>40</sup> 12464 R.C.W. 1935.

<sup>41</sup> 520 R.C.W. 1935 as amended by Session Laws, 1937, Chapter 33.

(g) Contingent Funds.

In one particular instance the Board of Examiners performs a function which amounts to post-audit. This arises in the administration of what is known as contingent revolving funds. Due to the emergency nature of some purchases which various State governmental units might have to make from time to time it may be impossible or inadvisable for the Board of Examiners to review a claim before its payment. Such a situation occurs when, in the operation of an institution or agency, a purchase must be made and paid for at once else the service being performed would be seriously interrupted.

To meet such a situation the Board of Examiners is empowered to set up at its discretion for "any and all of the state institutions... departments, boards or commissions contingent revolving accounts."<sup>42</sup> In this event a certain sum agreed upon by the Board is transferred in trust to the business office of such institutions to be used in the payment of demands "requiring immediate cash payment." The transactions performed under all such funds are to be reported monthly to the Board of Examiners with proper vouchers for every payment made. There is no reason to suppose that the post-audit here set among the duties of the Board of Examiners is any more thoroughly executed than

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<sup>42</sup> 195 R.C.H. 1935. At its pleasure the Board of Examiners may cancel the authorization for such funds and recall them.

that of the ordinary claims.

These are the laws concerning the treatment of claims by the Board. How does the system actually work?

### c. Practical Operation.

It is inconceivable that the members of the Board of Examiners could, in addition to all of their other duties, go over each claim presented to the State, check the appropriation to which it will be charged and qualify or disqualify it after careful audit. Nor does the Board have a staff which can perform this duty.

All claims do go to the office of the State Board of Examiners. There they are checked over by the Assistant Clerk. Ones of routine nature will be held out and passed along to the offices of two of the members of the Board. In those offices the signature of the Governor, Attorney General, or Secretary of State, as the case might be, will be rubber stamped on the face of the claim in approval of it. Some claims will not be so easily disposed of. There may be a question of policy which the Assistant Clerk cannot answer or for which he does not care to take the responsibility. These he will present to the Clerk of the Board. The Clerk, out of long experience, will be able to dispose of most of these without referring them to the Board members and they too will be routed along for rubber stamping. Finally, there will be a very few—perhaps ten or twelve a week<sup>43</sup>—which the Clerk

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<sup>43</sup> Statement of W. L. Fitzsimmons in interview.

will decide must have the attention of the Board. These he will take up with the members in Board meeting and they shall there be dealt with according to law. It must be emphasized that none of these steps constitutes what is known as <sup>ll</sup>audit.

The foregoing fiscal powers and other general powers not mentioned comprise an impressive total and in effect make the Board of Examiners the supreme financial agency of the State—an agency whose fiscal powers give it an extensive potential though probably inefficient control over State finances. It is an unscientific concentration of administrative routine in the hands of three policy making officials who should be able to devote more of their time to the affairs of their own offices. It would be difficult to single out just where or when, but at some stage in Montana's growth the tasks delegated to the Board of Examiners reached a point of diminishing returns.

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<sup>ll</sup> State financial officers interviewed were in general agreement that no audit of claims is ordinarily performed.

## CHAPTER VII

## OTHER OFFICES OF POTENTIAL CONTROL

## 1. State Auditor.

Another Constitutional office in the State of Montana in which some measure of expenditure control may be exercised is that of the State Auditor.<sup>1</sup> While only the Auditor's control or potential control activities shall here be considered, it should be remembered that he has many other duties to perform.

The State Auditor is an elected official and by virtue of his office he is to "superintend the fiscal concerns of the State."<sup>2</sup> The actual control which he may exercise over State spending is very limited and the essence of it is defined in the following Sections of legislation:

[It is his duty] ...to draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof.<sup>3</sup>

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<sup>1</sup> The State Auditor is also ex officio Investment Commissioner and Real Estate Commissioner by Section 100 and 161 R.C.M. 1935.

<sup>2</sup> 151 (1) R.C.M. 1935.

<sup>3</sup> 151 (17) R.C.M. 1935.



...All warrants for claims which have been audited by the board of examiners and filed in his office [the auditor's] must be drawn in the order of the numbers placed upon them by that board.<sup>4</sup>

The extent of the Auditor's control activity, then, is to hold disbursements within the amounts authorized by law. It is quite feasible that a spending department may exceed its appropriation. All of the claims for moneys expended will probably not arrive at the Capitol and be approved simultaneously. The Auditor will issue warrants so long as claims come to him with the approval of the Board of Examiners and while there are appropriation balances remaining to cover them. When the appropriations are depleted he must refuse to issue warrants on them. In such a case, if the purchase made is not returnable or is so necessary as to be indispensable, the Board of Examiners will have to request a deficiency appropriation from the Legislature to cover it. While the Auditor is legally obligated to keep track of the balances of appropriations for all departments, institutions, and agencies and prevent State funds from being paid out beyond their limits his records are on a cash basis and do not show encumbrances which may be accruing but for which claims have not yet been presented. There is no present procedure in which a central authority assures that governmental units

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<sup>4</sup> 154 R.C.M. 1935.

<sup>5</sup> "The state auditor must not draw his warrant for any claim unless it has been approved by the board, except for salaries or compensation of officers fixed by law." 249 R.C.M. 1935.

will not obligate State funds beyond appropriated amounts: there is no centralized agency which has account of the exact status of spending on the part of State activities. This is an inadequacy of the present system.<sup>6</sup>

## 2. State Treasurer.

The Treasurer exercises no control over State expenditures. He amounts to the State banker and as such he is the most independent officer of the financial system. For the purpose of this study his duty may be accepted as:

To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.<sup>7</sup>

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<sup>6</sup> Mr. John Norman Thomas, State Accountant, has currently been conducting an experimental system to remedy this failure. He tabulates all expenditure obligations of his office when the obligation is first proposed. The total of pending obligations and claims paid subtracted from the legislative appropriations made for his office expense shows the clear balance remaining. These figures he tabulates under columns of the following titles: date; reference number; item; amount paid; total of unpaid encumbrances; total expenditures; appropriation; unencumbered balance; total of encumbrances; and cash balance. He proposes to suggest to the Legislature that all requisitions for purchases be routed to his office before they go to the Purchasing Department. There they would be recorded and checked against a running account kept for all departments and agencies similar to the one now being tried. If there were ample funds for the purchase, the fact would be noted on the requisition and purchase could be made. While this certainly is not complete pre-audit, it is a significant step in the direction of control and the experiment of Mr. Thomas supports the observation made in the text above. It is here agreed that such a service is absolutely necessary.

<sup>7</sup> 174 (1) R.C.M. 1935.

and,

...to pay warrants drawn upon the state auditor out of the funds upon and in the order in which they are drawn.<sup>8</sup>

In these activities there is no element of expenditure control.

### 3. State Examiner.

At the outset it may be simply stated that the State Examiner performs no control activity per se. In summary it is his duty to examine at least once a year the books and accounts of all State officers who collect or handle money and of the "educational, charitable, penal and reformatory institutions" of the State; to prescribe the general methods and details of accounting for the receipt and disbursement of money belonging to all such units of government as well as local government; and to perform the duties of Bank Examiner.<sup>9</sup> It is this latter activity which takes the bulk of the officer's attention. Of more importance here is his duty:

To visit each and every office of the officers, boards and institutions named in this act at least once in each year; and at such time to examine the books, accounts and vouchers in said office, to verify statements of receipts and expenditures, and indebtedness, and to examine and pass upon the character and amounts of any commissions, percentage, or charges for services, exacted by any officer, and of all claims allowed by any of said officers, boards or institutions.<sup>10</sup>

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<sup>8</sup> 174 (4) R.C.M. 1935.

<sup>9</sup> 210 (1), (3), (5) R.C.M. 1935.

<sup>10</sup> 210 (4) R.C.M. 1935.

The effect of this is to set up a potential system of post-audit and from the language of the law it could be a far reaching and perhaps reasonably efficient check—an important step in expenditure control. For in such a post-auditing the propriety and classification of spending on the part of any governmental unit could—and should—be investigated.<sup>11</sup>

Practically, however, this legal power is not exercised in this way and is not looked upon as a device of budget control. A study made by Griffenhagen & Associates in 1941 showed that the audit conducted of the financial affairs of the various State agencies is "little more than a cash audit of the receipts of the office and of the disposition of those receipts."<sup>12</sup>

Aside from the fact that the Examiner has more duties than he can perform under present organization a reason for this failure seems to arise from the Examiner's line of responsibility.<sup>13</sup> The State

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<sup>11</sup> An audit of this nature would be an important instrument in the hands of an auditor responsible directly to the Legislative Assembly as a means of keeping a watch on State administrative expenditures for it would provide a running check on the operation and efficiency of State activities pointing out inefficiencies which might be corrected by legislation and conformity with law; and it should also serve as an impetus to State officers to perform their duties in a manner which would not lay them open to Legislative criticism.

<sup>12</sup> Montana, "Financial Administration," Reports of Governor's Committee on Reorganization and Economy, (Helena, 1941) No. 43, p. 80.

<sup>13</sup> This observation was arrived at independently. It concurs with that made by the Governor's Committee on Reorganization. Ibid.

Examiner is appointed by the Governor and confirmed by the Senate and serves for a term of four years. Thus, he is responsible to the chief executive whose policies and the practices of whose subordinates (who may or may not be of the Governor's political party and loyal to him) he is to check through his post-audit. Under such a system an Examiner would be "politically" foolish to be too critical of expenditures favored by his own political benefactor or strongly supported by opposing factions with whom it would be expedient to keep peace. The result? No control from this office and apparently very little information which contributes to control on the part of any other agency.

#### 4. The State Accountant.

The position of the State Accountant was created in 1909 by legislative act.<sup>14</sup> His duties, other than those which have to do with the preparation of the budget, overlap those of the State Examiner in that he is to examine the books, accounts, and general financial affairs and conditions of the University of Montana, Montana State Normal School, Agricultural College of Montana, State Orphan's Home, Montana State School of Mines, Montana School for the Deaf and Blind, State Reform School, Soldier's Home, State Prison, Montana State Fair, and State Insane Asylum. He is, in fact, deputized by the State Examiner in his performance of these functions and his reports on the institutions

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<sup>14</sup> Session Laws, 1909, Chapter 86.

are accepted by the Examiner and used as his own.<sup>15</sup>

The State Accountant is further required to prescribe the general methods and details of accounting for the receipt and disbursement of these institutions.

As in the case of the Examiner these functions could amount to valuable post-audit, but they actually fall short of their potentialities. There is no effort made to exercise control over institutional spending by the Accountant. He merely audits the books (though not as completely as required by law--see footnote page 73) and then, as required by law, makes a report of his examination to the Board of Examiners.

Here again the auditing officer is conducting an investigation for the unit of government which appoints him to his office and which is the Board overseeing the institutions which he inspects. There is value in having an internal audit of one's own financial activities or the financial affairs which are, legally at least, under one's cognizance; it is essential for sound control. However, it must be thoroughly performed in accordance with a definite policy of responsible budget and expenditure control. If the budget does not amount to a serious financial plan and if the controlling authority is weak in control procedure the internal post-audit loses much of its effectiveness. Internal post-audit does not appear to be a satisfactory

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<sup>15</sup> Montana, Governor's Committee on Reorganization and Economy, op. cit., p. 73.

substitute for an independent audit conducted by the legislative branch of the government.

#### 5. State Purchasing Department.

The State Purchasing Department was created by law in 1921. At its head is the State Purchasing Agent who is appointed to his office by the Governor for no definite period, but to serve at the latter's pleasure.<sup>16</sup>

Many of the duties of the State Purchasing Department and the Furnishing Board are overlapping and so can be performed by the former, with the Furnishing Board acting in a policy making capacity. As the central purchasing agency of the State the Purchasing Department is a service institution for the other agencies, institutions and departments acting upon their requests to procure goods and materials for them:

The state purchasing agent shall, under the restrictions of this act, have full and sole power and authority and it shall be his duty upon approval of the state board of examiners to contract for and purchase or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution or official. For the purpose of making such purchases and contracts the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official.<sup>17</sup>

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<sup>16</sup> 284 R.C.M. 1935.

<sup>17</sup> 285 R.C.M. 1935.

Functioning in this respect the Purchasing Department exercises no control over the spending of the governmental units for which it buys. The Department does not concern itself with whether or not the purchase is in order so far as the budget is concerned—that is a matter for the requesting unit to determine for itself and the requesting officer takes it upon himself to ascertain that a sufficient unencumbered balance remains to pay for the purchase. This is true in spite of two sections of law which might seem to indicate the contrary:

The state officers, superintendents, commissioners, departments or institutions, shall not have the authority to purchase any supplies or material except on approval of the state purchasing agent.<sup>18</sup>

and,

An estimate or requisition presented by the department, commission, board or state official in control of the appropriation or fund against which such contract or purchase is to be charged must be approved by the state purchasing agent and this shall be full authority for any contract and any purchase made by the state purchasing department...<sup>19</sup>

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<sup>18</sup> 293.7 R.C.M. 1935.

<sup>19</sup> 287 R.C.M. 1935, as amended by Session Laws, 1939, Chapter 51. The act goes on to provide, "...that no purchase shall be made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof."



There is no provision of law stating what the basis of the Purchasing Agent's approval or disapproval shall be.<sup>20</sup> It is certain that the Purchasing Department makes no effort to act as a controlling agency in the budget system nor does it question the availability of funds for requisitions coming to it, this being, as has been indicated, the concern of the requesting department under the present system. Actually the performance of such control on the part of the Purchasing Department would be an unwarranted assumption of power and would be contrary to the intention of the law under the present system.

#### 6. Summary.

To tie the foregoing offices and procedures together and show them in their customary relationship with one another an example of a case involving the normal function of each shall be given.

For instance, the Office of the State Superintendent of Schools needs a new desk. The head of the department, i.e. the State Superintendent will fill out a "Requisition on the State Purchasing Department," in duplicate on a form provided by the Purchasing Department, stating the number of tables desired, giving a brief description of the item to be bought and its estimated cost. He then writes his signature in

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<sup>20</sup> From an interview with the Purchasing Agent and his Assistant it is gathered that any request will be approved so long as the material sought is reasonable and, of course, in the case of capital goods, if the Board of Examiners approves the requisition.

the space provided on the blank below the following statement:

I hereby certify that the items specified in this requisition are absolutely necessary; that they are to be used for the benefit of the State of Montana; that there is proper authority of law and sufficient balance in the appropriation for the purchase of the same.<sup>21</sup>

In this way the responsibility is placed upon the requesting department head to be sure that his request is an item needed, that there is proper authority of law for its purchase and that there is sufficient unencumbered balance remaining in the appropriation for his office furniture to pay for the table in this case.

The requisition is submitted to the Purchasing Department. Since the request made is for furniture—a capital item—it must be presented to the State Board of Examiners for its approval. The Board will view the request and if it seems in order and necessary the request will be granted. There may or may not be close investigation of the requesting department.

Once the request is approved by the Board of Examiners the Purchasing Department is free to go ahead and make the purchase.

Following procurement and delivery of the table the company from which it was purchased will present its bill or "claim" for the amount to the office of the Superintendent of Schools in triplicate. If this bill appears in order to the department head (Superintendent of Schools) he will approve it and the claim is then sent along to the Board of Examiners.

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<sup>21</sup> Montana, Purchasing Department Form 2-101-3-47.

When the claim is presented at the office of the State Board of Examiners it will be received by the Assistant Clerk, and being a fairly large expenditure for capital goods will no doubt be shown to the Clerk who may present it to the Board. It is likely that the Clerk will recall that the Board has already approved of the purchase and so he can pass the claim along to the offices of two Board members to have their signatures rubber stamped thereon. If, however, the claim is presented to the Board, the members will note that they previously approved of the expenditure, that the claim has been approved by the Superintendent of Schools and so they can give their approval without further examination.

The approved claim is then delivered to the office of the State Auditor. In his office it shall be checked against his accounts to ascertain whether or not the appropriation balance upon which payment is to be drawn is ample to cover the claim. And if he finds that it is, a warrant for the amount indicated on the approved claim shall be made out in favor of the claimant. This warrant—very much like a check—will be mailed to the company and will ultimately be paid by the State Treasurer.

In the meantime the claim is taken from the Auditor's office to the office of the State Accountant where the amount paid, account number and classification of the purchase is posted in the general and breakdown ledgers in preparation of the budget document. After this step the claim is finally filed.

Conceivably, the State Examiner in the course of his audit of the books of the Superintendent of Schools might run across this purchase. Under the present system he would merely cite--if he noticed it at all--that the table had been received and paid for out of an appropriation for capital expenses. Officially, he would not be interested in whether the table was an extravagant purchase or a typewriter stand, whether it was being used as a work place on which to sort text books, or as a serving place for afternoon tea.

Where in this whole process which has been described is there effective centralized budget or expenditure control? The answer is nowhere.

From the foregoing study of control the following observations may be summarized:

1. The State Board of Examiners is an overburdened Board with neither the time nor the staff to perform the potential control functions which it holds.
2. No effective, comprehensive pre-audit is currently performed.
3. Degrees of internal post-audit are exercised by the State Examiner and the State Auditor. In neither case is the audit as effective as it should be due, in part at least, to the line of responsibility of the auditors, lack of clearcut policy of control, and inefficient organization.
4. Once appropriation measures have been passed the budget is no longer regarded as a plan of spending, but a maximum boundary which

should not be exceeded, but may be if occasion demands.

5. There is no central accounting agency which has record of the exact balances, encumbered and unencumbered, of funds of all State agencies, departments, institutions, boards and commissions.

## **PART IV**

### **Conclusion**

## CHAPTER VIII

## CONCLUSION

In the foregoing chapters the existing budget and expenditure control system of Montana has been described in both its legal and practical aspects. Failures and inadequacies of the provisions and procedure have been pointed out.

At least two detailed, government studies<sup>1</sup> have already suggested plans of reorganization and they indicate that some officials, at least, have been aware that change is needed. A third and much briefer plan<sup>2</sup> indicates that a small group of private citizens—specialists in accounting—have recently concerned themselves with the matter. The first of these was made in 1919, the last in 1947. In their essential points they are agreed: there must be better budget preparation, a central accounting office, more adequate audit, internal and/or external, and closer supervision of inventory.

Why, if plans for reorganization have been proposed, have they not been adopted? The answer lies, in part at least, in the very structure of the government which is to be changed. The chief reason seems to be that the top administrative positions in the State—the

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<sup>1</sup> Governor's Committee on Reorganization and Economy, op. cit., and Montana State Efficiency and Trade Commission, op. cit.

<sup>2</sup> Report of Municipal Methods Improvement Committee to Montana Society of Certified Public Accountants (Great Falls, 1947).

"cabinet posts"—are filled by popular election. Auditor, Treasurer, Secretary of State and Attorney General are elected. Each one obtains and sustains his position because of an "organization" among his friends, office employees, their friends and relatives. Any change is apt to affect them all in their employment or security and naturally, for them, the status quo is to be preferred.

Conceivably, if these officials were appointed by the Governor rather than being elected, a reform program sponsored by the chief executive would have greater chance of being put through, for the Governor's administration would be bound to support him. If the Governor were the sole elective, executive official he might gain his office on a reform platform. His appointees would be committed to support his program.

Under the present system in which the various administrative heads may represent opposing parties it is unlikely that there will be agreement on any executive proposal to revise the structure—indeed, how could there really be an executive program? However, since these offices are all Constitutional in origin it is most unlikely that they will be changed to appointive positions in the near future.

which leads to a second reason why fiscal reform is difficult. That is an apathetic citizenry. It will take a powerful propaganda campaign or an extreme scandal to stir the electorate to a point where they will demand their lawmaking representatives to effect changes



in Montana State government.<sup>3</sup> The campaign is, of course, the alternative to be hoped for—and it is a factor which previous reports have neglected to consider. The logical but unfortunate projection of an apathetic citizenry is a complacent Legislative Assembly.<sup>4</sup>

The problem which here presents itself, regardless of those obstacles, is, how may the failures and inadequacies of the fiscal system which have been pointed out be overcome? It is a question of reorganization.

A second question then immediately comes up: should a proposal for reform look to complete revision necessarily involving considerable Constitutional amendment (or a new Constitution) or should a plan be tendered which would attempt to overcome the worst of the present system and improvise reform solely through legislative action? (Improvisation has been going on for years. The Office of the State

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<sup>3</sup> Such a feeling—or lack of feeling—about State government may be caused in part at least by the confusing framework and number of elective officials. It is easier to avoid mental confusion by just not thinking about the problem. There is the "colonial complex" too. The feeling accepted by so many that Montana is the garnet bowl from which big outside interests suck their nourishment and that any disturbances appearing on the surface of its contents which might burn will be "blowed" cool by their mysterious, ubiquitous breaths.

<sup>4</sup> "...the legislature was left free to enact such measures as it deemed best touching the subject matter under consideration. If it ... fails to act at all there is no power other than public opinion which can coerce it into activity." Thus the Supreme Court of Montana confirms this observation. Edwards v. County of Lewis and Clark 53 M 305. Currently there are stirrings among the people which may result in pressure to improve the position of the schools. It is to be hoped that such a spirit can be encouraged and will spread to other phases of government.

Accountant, the Budget Act, the Purchasing Department were all legislative developments seeking to better the system.) In this case of budget and control, legislation is certainly only second best, but it may be the only practical way that the problem can be soon met. Revision of the Constitution would be a very difficult and costly process. An idealist would no doubt seek a complete house cleaning. Reluctantly, a suggestion for the more practical reorganization shall be presented here--practical from the point of possibility.

What are the requirements demanded of a more suitable fiscal administration in Montana? As should now be apparent they are, broadly, (1) more thorough budget making and (2) closer budget and expenditure control after the budget is adopted.

The first is perhaps the simplest. The actual budget making authority should have the power to investigate the requesting units, to conduct interviews with their officers to determine the worthiness of requests and the efficiency of office practices. State agencies, institutions and departments should be required to plan their work on a quarterly or semi-annual basis in order that the central control activity can ascertain that they will stay within budget appropriations. The budget officer should be independent enough so that he may recommend cuts and changes without fear of losing his own position. And budget making should be more closely tied in with planning agencies. In addition the budget authority might logically be required to set up a system of standardization of qualifications and salaries for positions

and to pass on the publication of reports of various offices.

Since the present budget system was created by legislative act it would seem that the system could be revised in the same manner. For instance, a budget office could be set up by law which would be responsible to the Governor rather than to the Board of Examiners and have the necessary powers delegated to it. It is possible that such a revision might be an improvement--in theory it would seem to be--but there would still remain the practical problem of all of those elective offices of the government with their claims of special interest and pressure. If the Governor should seek to assume leadership in fiscal planning he would almost certainly be confronted by several opposing political machines within the administrative branch.

Choosing second best again, the alternative would seem to be to leave the budget making duties nominally in the hands of the Board of Examiners, but to have them performed by a staff working under the Board as a component of a central control agency to be suggested further along. Responsible for the actual budget preparation would be a budget officer who could relieve, or share with, the Clerk of the Board of Examiners some of the latter's present planning duties.

As such a plan would work the budget would be drawn up and completely prepared by the budget staff as an agent of the Board of Examiners. The central control office should be made responsible

for the enforcement of the law requiring inventories to be taken by State activities and the actual administration of the law might be assigned to the budget officer. Upon the failure of any unit to take an inventory and present the results to the budget authority it would be the latter's duty to determine the cause of the failure, initiate punitive action if necessary and make a provisional inventory to be used in budget preparation.

In this way the budget should become a more comprehensive document especially in view of tying in planning with budget making, and the investigations to arrive at a more accurate statement of necessary operating expenses.

This proposal might at first encounter the hostility of the State Accountant for he would be reluctant to see part of his staff moved out from under him to a budget office. However, the Accountant's position would not be jeopardized for he too would continue to serve under the Board of Examiners in control activities with sufficient staff to perform functions now being neglected in spite of legal requirements. As a matter of fact the whole central control office might actually be created by expanding the staff and organization of the State Accountant. This would in effect create a central finance department under the direction of the State Accountant (whose title could remain the same or might be changed to Controller<sup>5</sup>).

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<sup>5</sup> In Illinois the officer in charge of the central agency performing very similar functions to those proposed here is called the "Administrative Auditor." Max Murphy Capponfield, Financial Administration in the States of Illinois, Ohio and Indiana (Unpublished thesis, University of Illinois) p. 62.

as a staff agency of the Board of Examiners.

What is desired under control is that pre-audit should be exercised on all requisitions for purchase and on claims against the State, that central accounts should be maintained so that an exact statement of appropriations, obligated funds, unencumbered funds and balances be always available for all units of State government and that the bookkeeping and business procedure of all State offices should be periodically checked for accuracy, honesty and efficiency. All such activity should not only be conducted with an eye to holding expenditures to limits set by the budget, but also that the budget plan should be carried out as closely as possible.

There seems to be no question but what, as other reports have pointed out, these functions could best be performed by a central accounting office. But after almost thirty years of such recommendations such a plan has not been taken up.

A great legal obstacle to control reform in Montana is the Constitutional requirement<sup>6</sup> that all claims must be approved by the Board of Examiners. So long as this provision stands, no central accounting office can be set up which would result in the claims by-passing the Board or which would transfer control leadership to the Governor.

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<sup>6</sup> Article VII, Section 20.

Consequently, if the Constitutional and legal business manager of the State must remain a three headed board, the next best solution seems to be that a central auditing or controller agency be set up as a subsidiary of the Board of Examiners.

It would become the duty of this unit to audit all State activities carefully as an instrument of budget and expenditure control. Reports of these audits would be delivered to the budget officer, and to the Board of Examiners. If inefficiency, carelessness or dishonesty were found it should be the legal duty of the Accountant, the budget officer or the Board of Examiners to order changes or to propose to the Legislature laws which would remedy the situation if it arose from legal causes.

Secondly, all requisitions from State departments, agencies, or institutions for purchases would be forwarded to the Purchasing Department via this office. On central accounts there maintained the exact status of funds of all such departments, agencies, and institutions would be known. Thus, when a requisition for purchase appeared it could be checked against the unencumbered fund balance from which it was to be paid. If an ample balance remained and investigation showed the purchase to be legal and worthy, the requisition would be approved and transmitted to the Purchasing Department. The purchase would then be made.

When the claim for such purchase came in, and after its receipt and approval by the department which had initiated the requisition, it would be sent not to the Board of Examiners but to this central

control agency which would audit it carefully, and then submit it to the Board with recommendation for approval. Actually, the Board of Examiners would not see such claims, but they would be sent to the offices of its members for signatures as is now done. Adjustment of claims which did not appear to be wholly in order would be made by the control agency, or at least the action would be initiated there. The control unit would be acting under authority of the Board of Examiners which would still be the final administrative policy maker and the system would be just as legal as the present rubber stamp procedure and far more adequate from a control point of view.

From there the claim would go to the State Auditor's office where a warrant in payment would be issued. (This function could be performed more efficiently in the Central Accounting Office, but the Auditor is a creature of the Constitution and so cannot be eliminated from the picture by legislative change.)

Finally, the claim would be returned to the control unit where notation of the expenditure would be recorded in the central book-keeping accounts as a debit on the appropriation concerned. Thus the cycle would be complete.

The foregoing changes are somewhat oversimplified but they point out a solution to the question of how to effect change solely through legislative action without a change in the Constitution. There is no doubt but what a Constitutional revision would be the most satisfactory way to revise the State's organization. The above proposal has the advantage of disrupting only a minimum of present

offices and these would simply be reorganized—the present jobs plus a very few more would still be there; and, as is one purpose of the revision, a great part of the burden of fiscal duties now imposed upon the Board of Examiners, but not being satisfactorily performed, would be shifted to subordinate technicians.

Probably the greatest failure of the system would be that these new offices would not be responsible to one official—ideally the Governor—but to a Board of three members serving ex officio the offices to which they were elected. As a consequence, policy might at times be uncertain and there would be room for party maneuvering. There would still be the difficulty of achieving clear-cut administrative leadership.

It is to be emphasized that while this proposal sets up a central accounting agency with powers of administrative audit and review of purchase requests as great a measure of autonomy should be left to the various departments, institutions and agencies as possible. It is recognized that these units are specialties with technicians (supposedly<sup>7</sup>) in charge of them and they should be permitted

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<sup>7</sup> This term, "supposedly," is not added in a sarcastic tone. There is reason to believe, however, that there may be confusion or complete misconception in the public mind as to the qualifications of some of the officials who head departments, institutions or agencies of the State. The President of the University, for example, might be popularly thought of as a technician of education which ideally he should be. Actually, however, he must first of all excel, consciously or inherently, in the arts of The Prince.



to perform their activities as freely as possible. The central accounting and control agency is to be an overseer of expenditures, ascertaining their legality prior to purchase and that funds are available for payment. In the case where the wisdom of a proposed expenditure seems questionable, the control unit should be able to bring it to the attention of the highest administrative authorities, i.e. the Board of Examiners, for a conclusive decision.<sup>8</sup>

Finally, and most important, there should be a legislative check in the form of an audit upon the activities of the Board of Examiners and its subsidiaries under the plan just proposed as well as on other departments, agencies and institutions of the State. Such an external audit should be established regardless of the foregoing proposals. It would be wholly independent of the administrative branch, responsible only to the Legislative Assembly.<sup>9</sup>

The function of such an office would be to exercise careful and thorough examination of bookkeeping records, financial policy and practice, expenditures and administrative practices. The officer in charge of such a service should be well paid and should be chosen because of recognized accounting ability and devotion to public service.<sup>10</sup>

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<sup>8</sup> Leonard L. White, op. cit., p. 246.

<sup>9</sup> Ibid., p. 256.

<sup>10</sup> This function has been performed in some states by a private outside firm hired for the job. Max Murphy Sappenfield, op. cit., p. 113. Such a system might be tried in Montana experimentally for a period of time before any permanent system of external audit is established.

He would be responsible solely to the legislative branch and would make his reports directly to it. It is believed that the business practices of various State offices might be improved sufficiently to cover the cost of such a service and perhaps its effect would be sufficient to diminish the necessity of detailed administrative audit.

There is much embodied in this reorganizational sketch which will be found in other proposals formerly made and they must, of course, be embodied in any new program forthcoming for the objectives of all such plans are necessarily similar and the means to their accomplishment will likewise resemble each other in fundamentals.

Both the Griffenhagen Report and the Report of the Efficiency and Trade Commission were objective studies in which the defects of the existing system were sought out and enumerated and revisions were suggested with the apparent expectation that an eager Legislature would take them up and enact them or base reform enactments upon them. Unfortunately Legislatures do not appear to be customarily eager bodies. Therefore, it is not surprising, albeit disappointing, that the Legislative Assembly has not instituted reform in financial administration. The difficulty under the present Constitution of having clearcut administrative leadership seeking to bring about reform has been alluded to. If the Legislature fails to bring reform and if the head of the administration, i.e. the Governor, is unable to bring it about where must the impetus come from?

The point is, and the factor which the two major reports dealing

With this topic have neglected, is, that leadership is Montana's great political need. A proposal for political revision must take into account not only the inadequacies of the system and corrective measures, but also it must either propagandize or provide for the propagandizing of the need which it seeks to satisfy or it must designate the leader of the reform. This observation is borne out by the third and briefest report which considers the problem of fiscal reform—that which was prepared by a private group, the Montana Society of Certified Public Accountants.

The extreme individualism characteristic of Montana's territorial days has been modified, but the same forces which drove men to exploit the territory for the satisfaction of their own wishes today motivate men and women—for whom government has become an end in itself—to entrench themselves in the intricacies of an inefficient framework of government and "serve" there in the "public interest." Any proposal for improvement must not only point out the inadequacies of the present system, but it must also arouse the public interest to bring a clamor for reform which will outweigh the forces of selfish individualism which combine so readily at the show of danger. Any reform in Montana's system, whether it be the fiscal system or the general framework of government, must be initiated by determined citizens who are dedicated, consciously or habitually, to democratic procedures. Any plan which overlooks this fact amounts to nothing more than an academic exercise in its accomplishments.

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