

3.) The funds are not dedicated from now ad infinitum, or until repeal by amendment or by another Constitutional Convention. The proposed section permits diversion of the earmarked funds to other purposes if each house of the Legislative Assembly by a three-fifths majority, approves such expenditure. In other words, the primary responsibility for review, assessment . . . and eventually, allocation . . . of highway funds rests with the Legislature. That body is free to change the earmark.

The committee felt that retention of the anti-diversion amendment was necessary at the present time. The amendment is a recent addition to the Constitution, overwhelmingly approved by the voters in 1956. A large amount of Federal matching money is still pouring into the state to finance the interstate system and the local primary and secondary highway systems. Extensive testimony indicates its exclusion may well jeopardize the final product of this Convention.

The committee was also concerned with the proper use of gasoline and motor fuel tax revenues. Those taxing programs were originally created to benefit the state highway system. The committee felt that original purpose should be maintained. The committee realizes that the time may come when highway funds are no longer needed, at least not at the level of current programs. In that case the gasoline and fuel taxes should perhaps be allowed to diminish. The committee would hate to create another situation like the cigarette tax, which was originally set up to fund programs and benefits for veterans. That tax has now been moved to fund the Long Range Building Program and the General Fund. In an effort to encourage the elimination of the gasoline and motor fuel taxes when their usefulness is up, the committee has tried to strengthen legislative control and allocation over highway funds.

★ Section 7. The State Board of Tax Audit and Appeals shall be composed of five members, who shall be appointed by the governor, by and with the advice and consent of the Senate (Legislative Assembly). The legislative assembly shall divide the state into five districts as equal as practical in population of citizens and a member of such board shall be a resident of each of said districts. Each member shall hold his office for a term of five years, and until his successor shall have been appointed and qualified. In case of a vacancy, the person appointed to fill such vacancy shall hold office for the unexpired term in which the vacancy occurs. The first five members appointed to said board shall determine their respective terms by lot so that a term of office shall expire each succeeding year thereafter. Other qualifications, and salaries of members, shall be as provided by law; provided, however, that such members shall be so appointed that the board will not be composed of more than three

members who are affiliated with the same political party or organization; provided, further, that each member shall devote his entire time to his duties of office and shall not hold any position of trust or profit, or engage in any other occupation or business, or serve on or under any committee of any political party or organization or candidate for office, and each member shall file with the Secretary of State, annually, a full, detailed and complete disclosure of his financial condition.

The State Board of Tax Audit and Appeals shall have appellate jurisdiction of individual appeals of all divisions of the administrative agency of the state carrying out the provisions of Section 3 of this article in order to insure that all taxes are administered according to law. Such individual appeals may be for the undervaluation and overvaluation and assessment of the appellant's property, or any other taxpayer's property. The board shall also have appellate jurisdiction of individual appeals of other divisions of state and local agencies related to license and excise taxation as may be provided by law. The board shall have the right to audit the state administration agency to ascertain instances of undervaluation or overvaluation of property to be taxed and publish its findings thereof. The legislative assembly may prescribe by law other duties to be performed by such board and may provide that minor appeals, as defined by law, may be adjudicated by a single board member in the county where the property is located, or the taxpaying citizen resides, or as the case may be.

COMMENT

The committee realizes the importance of a short document. The introduction to this report emphasized the committee's concern for brevity and clarity. But this proposed Section 7 creates a new protection for the Montana taxpayer, an independent tax appeal board. Because the provision provides a new right, the structure, function and jurisdiction of the board are spelled out in some detail.

The present section is proposed for a new Constitution because it establishes a guarantee never provided for Montana taxpayers. Under the present tax administration program, the same governmental bodies (County Boards of Equalization and State Board of Equalization) that establish revenue policies and procedures also sit in judgment on the implementation of those procedures. Overwhelming testimony to the committee indicates that the procedure does not guarantee an independent, non-partial, objective review of tax decisions. The Montana taxpayer needs some avenue of recourse, besides the tax administrator or the courts, to evaluate his tax treatment. The proposed

section accomplishes that objective by establishing an independent review procedure.

The Constitution should not specify details of tax administration. Present Section 15 of Article XII of the Montana Constitution creates an elaborate method of property tax administration for the state, and demonstrates the futility of including such detail in a Constitution. When the Constitution was written in 1889, property taxes were the sole source of revenue for the state. But like the framers of 1889, this convention cannot foresee all the changes in the state's revenue structure. The details of that revenue administration should be left to the legislature, which can evaluate changes and create the best structure to administer revenue programs.

* Section 8. No state debt shall be created unless authorized by a three-fifths vote of the members of both houses of the legislative assembly. State debt cannot be created to cover deficits incurred when appropriations exceed anticipated revenue during any budget period.

COMMENTS

This section replaces the present state debt limitation established by Article XIII, Section 2. That old section created a \$100,000 debt limit for the state, with additional indebtedness as authorized by the electorate. The proposed section leaves the question of indebtedness entirely up to the legislature, requiring a three-fifths majority of the members-elect to create debt. The extraordinary majority requirement should insure careful consideration of any indebtedness proposal, and should prevent unnecessary programs.

The committee felt that some debt restriction should be placed on the legislature. A fixed dollar limit, like the present \$100,000-ceiling, is unrealistic and only encourages circumvention.

The committee does not possess the ability to forecast the economic future and fiscal capacity of the state. The committee was concerned with the problems involved in establishing a limitation that fluctuates with property valuations or state revenues. It feels the proposed provision will insure the viability of the Constitution for many generations.

The second sentence of this proposed section prevents the legislature from creating debt to balance the budget. While debt may be a viable tool in cases of catastrophe or extraordinary circumstances, the legislative assembly should not be free to thwart the "balance budget" intent of proposed Section 9.

