

- S p a r k s Aye
- S p e e r Aye
- S t u d e r Aye
- S u l l i v a n Aye
- S w a n b e r g Aye
- T o o l e Aye
- V a n B u s k i r k Aye
- V e r m i l l i o n Aye
- W a g n e r Aye
- W a r d Aye
- W a r d e n Aye
- W i l s o n Aye
- W o o d m a n s e y Aye

CLERK HANSON: Mr. Chairman, 83 delegates voting Aye, 1 voting No.

CHAIRMAN GRAYBILL: 83 having voted Aye and only 1 No, that motion passes. Is there other discussion of Section 1, sub. 1? Mr. Martin.

DELEGATE MARTIN: Mr. Chairman—President, I have an amendment up there.

CHAIRMAN GRAYBILL: It appears to the Chair that your amendment goes to Section 1, sub. 2, Mr. Martin. They've made a sub. 1 and a sub. 2 of those paragraphs.

DELEGATE MARTIN: Oh, I'm sorry.

CHAIRMAN GRAYBILL: I'll call on you. Are there other amendments or discussion to sub. 1? That's the first paragraph—Oh—up from lines 7 to 12, plus the new material. Mr. Nutting.

DELEGATE NUTTING: Mr. Chairman, would Mr. Harbaugh yield to a question?

CHAIRMAN GRAYBILL: Mr. Harbaugh?

DELEGATE HARBAUGH: I yield.

DELEGATE NUTTING: The three words "full educational potential"—conceivably, could that mean kindergarten for every child in the State of Montana? Adult education for every person in Montana? Vo-tech for every person in Montana?

DELEGATE HARBAUGH: Mr. President.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Yes, it is con-

ceivable that it could mean that. It's inconceivable to me, however, that the Legislature would ever authorize that sort of thing, because, as I stated in my introductory remarks, this would probably break the State of Montana. That would be in my estimation, a compelling state interest and would be completely wrong, I think, and a misconstruction of the broad, goal-oriented statement that we're making here, to look at that in this way.

DELEGATE NUTTING: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Nutting.

DELEGATE NUTTING: When you look at Section 1 and Section 2 and take them together—I know we make different statements on the floor, but still to read these two sections, I can't read them any other way but that the full educational potential of each person shall be developed. And in the last line, it shall be the duty of the Legislature to fully fund. So I—the statements we're making here on the floor and the statements that we—that I read on the page don't seem to be consistent.

DELEGATE HARBAUGH: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: One of the reasons—the basic reason that I moved to amend this section to subsections is precisely for the reason that Mr. Nutting has pointed out. We are setting forth, in subsection 1, basically a broad philosophy of education. We're trying to lay out the goals of education. In subsection 2, which we will come to next, we're going to talk about the mandate—in other words, the implementation of those goals. And I think that you have to make this distinction, that the one is a goal; that the second is the mandate.

CHAIRMAN GRAYBILL: Is there other discussion? If not, the question arises on the issue of the adoption of Section— Mr. Martin.

DELEGATE MARTIN: I think that a portion of my amendment to this section is in 1, the word "full".

CHAIRMAN GRAYBILL: Well, it may be. Your amendment says at line 13, and the word "full" doesn't appear on line 13. So if you'll tell me what you're talking about on line 10—

DELEGATE MARTIN: Thirteen of page 8.

CHAIRMAN GRAYBILL: Oh, well, just a moment. Very well. Mr. Martin, would you like us to read your amendment?

DELEGATE MARTIN: Yes, please.

CHAIRMAN GRAYBILL: Mr. Martin has an amendment. Will the clerk please read the first amendment to Mr. Martin's, because the second one applies to the second paragraph.

CLERK HANSON: "Mr. Chairman. I move to amend Section 1, page 8, of the Education and Public Lands Committee Proposal Number 10 as follows: At line 13, page 8, by deleting the word 'full'. Signed: Martin."

CHAIRMAN GRAYBILL: Mr. Martin would delete the word "full", so that the sentence reads, "provide for the establishment of a system of education which will develop the educational potential" rather than "the full educational potential".

Mr. Martin.

DELEGATE MARTIN: Mr. President. I find it nice to find, in the adoption of the amendment that was just made-to be on the popular side. And I must state a special interest. At one time, I was made a member of the Flathead Tribe. In talking about this amendment, I'd like to refer, if I may, to-or first of all, I'd like to extend my appreciation to the work of the Education Committee for the work that they did in preparing this article. I think it has some great potential and good for education. But I think that there were some references made to some special interests that people had, and that was in the-an article which appeared in the Tribune this morning which indicated that anyone who would be in opposition to the committee would recognize-- would represent some special interest. And particularly singled out was the Montana School Boards Association. At the moment, I might say that I am not a member of the Montana School Boards Association; I'm not a member of the Montana Education Association; I'm not a member of the Montana Board of Administrative School Officers. I only have a deep and sincere and abiding interest in the educational process. I think that Mr. Gardiner last night emphasized two points; the right to know and the right to have a say. And then he turned around and said, "It's time to open the doors and give the country back to the people."

Throughout this article, I think there is an effort to centralize education, and I think that we should go back and review a little bit of the history. And I'm only sorry today that a man who I think was a pioneer in the promotion of educational opportunity for Montanans isn't here this afternoon, and that's Paul Harlow. Because Paul Harlow and some others were responsible for the development of the foundation program in the State of Montana. They sought and saw the opportunity to provide educational opportunity for the young people of Montana. But most of all, they took off the wraps so that the teaching profession of the State of Montana could participate in government. And I think it's a credit to the-this Convention that we have so many educators who are taking part in this. And most of all, I think it's to the credit of Montana that the educators at the State University units, as well as the educators in the schools, have taken off their wraps and buried their notions that they couldn't participate in government because that wasn't the thing for teachers to do. They were supposed to be nonpartisan, nonpolitical and shouldn't even have a chance to say. So we have provided an educational opportunity for not only the youngsters of the state, but the teachers and the people who participate in education, to participate and contribute to good government. Now, when we're talking about the full educational development, we're writing a check that would be hard to deliver, and that has been evidenced by the fact that the foundation program, since it's adoption, has never been able to fully fulfill the obligations that it started. So I think that before we write into the Constitution the idea of "full", we better take a good look at this proposition. I hope that my amendment to this section prevails.

CHAIRMAN GRAYBILL: Mr. Arbanas.

DELEGATE ARBANAS: Mr. Chairman, members of the Convention. I would like to speak in opposition to the motion to delete the word "full". I suspect that there's been a kind of a misunderstanding here of the problem. Certainly the inclusion of the word "full" does not command an unlimited expansion of the field of education. What it does-it does not foist upon us an artificial limitation of the field of education. So that-- unlike the former Constitution that said we had to start only at this age and only go to that age or only this type of education or that type of education, the inclusion of the word "full" allows us to develop the education of Montana to its top poten-

tial in capacity. Therefore, I don't see the danger that Mr. Martin sees in the words.

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: Being the Chairman of the committee, I'd like to speak very briefly to this, if I may. Mr. Martin, of course, is a scholar of the English language and (Inaudible). And actually, I think the thing we ought to be looking at, Fred, is the term "goals". And also, if we take out-what is the educational potential? I mean, can we ever measure it? Is it from 5 to a hundred and two? And if we take out "full", how much does that do for clarification? We still have educational potential as a goal. So this is the argument-I'm not quibbling over it, but I don't see any point in taking it out.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I feel that the comments that Mr. Martin made may be of a legitimate concern, but not at this point. As I explained in my other remarks and as Mr. Champoux has just stated, we're talking here about a broad statement of philosophy. Now, we're not talking about the financing of the school system, which you referred to, Mr. Martin. And I would resist the amendment. I think that "full" is a modifier here of the educational potential, and to remove it, I think, would not do anything really to change the impact or the intent of this section. I would resist the amendment.

CHAIRMAN GRAYBILL: Very well. The question is—

Mr. Burkhardt.

DELEGATE BURKHARDT: Just as one other member of the Education Committee, Mr. Chairman, I would say I hope the word "full" remains. It would be like striking "liberty" from "life, liberty and the pursuit of happiness." It is a goal, and we'll hope to work toward it.

CHAIRMAN GRAYBILL: Very well. The question arises on Mr. Martin's motion to delete the word "full" from line 10, on page 3, of Section 1. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed. No.

DELEGATES: No.

CHAIRMAN GRAYBILL: The Noes have it. Very well. Is there other discussion of Section 1? Mr. Jacobsen.

DELEGATE JACOBSEN: Mr. President. Will Mr. Champoux yield to a question, please?

CHAIRMAN GRAYBILL: Mr. Champoux.

DELEGATE CHAMPOUX: I will.

DELEGATE JACOBSEN: Rick, in the—we've divided Section 1, now, into two sections, after Mrs. Eck's amendment and the other amendments. Now, should the-at-on line 10, at the end of the line, a person should—

DELEGATE CHAMPOUX: What page are you on, sir, please?

DELEGATE JACOBSEN: On page 3.

DELEGATE CHAMPOUX: At the end of line 10?

DELEGATE JACOBSEN: On the end of line 10, where you have a period-on "person". Should "in the public school system" not be added here, inasmuch as these two sections are divided now?

DELEGATE CHAMPOUX: I'd defer that to Mr. Harbaugh, since he has this section.

DELEGATE JACOBSEN: And also after "opportunity" on line 11, "in the public school". Mr. Harbaugh.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Let me see if I understand your question.

CHAIRMAN GRAYBILL: Mr. Harbaugh, the sense of his question is whether he doesn't want to limit the language in the first paragraph to "in the public schools".

DELEGATE HARBAUGH: "Shall be guaranteed to each person in the public schools?"

DELEGATE JACOBSEN: On line 10, it says "develop the full educational potential of each person." Shouldn't the words "in the public school system" be added there, inasmuch as we've divided this section into two parts?

DELEGATE HARBAUGH: Mr. Chairman. In response to that, I thinknot. I think thatif you would turn to the comments on page 9, here are some comments in regard to what we mean by this sentence. "It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person." And here we state that learning is a gradual process--or gradually being recognized as a process which extends throughout life. And that-as we all know, there are being developed, across the nation and in our own state, many educational opportunities for adults, for people of various age groups. I think that in my opening remarks, when I spoke about a new philosophy of education-I think one of the things that we need to recognize is that education is no longer thought of just in terms of very narrow boundaries of certain age limits and, in looking at the goal of education, that we want to realize that education is a continuing process. And many older people today are taking-are availing themselves of the opportunity to take courses and this sort of thing which, perhaps, they could not take when they were young. And to the extent that the state is able to provide this, we would like to make it a goal of the state to do this.

DELEGATE JACOBSEN: Will you yield to one more question?

DELEGATE HARBAUGH: Yes, I yield.

DELEGATE JACOBSEN: But now, does this refer to the fact that aid to private schools could come under this?

DELEGATE HARBAUGH: Mr. Chairman. No, this has no reference to that, at least in my mind, whatsoever.

DELEGATE JACOBSEN: Thank you.

CHAIRMAN GRAYBILL: Very well. The issue arises that when this committee does arise and report, after having had under consideration Section 1, sub. 1, as amended, that it recommend that this section shall be adopted. So many as shall be in favor of this motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.

DELEGATES: No.

CHAIRMAN GRAYBILL: Sub. 1 is adopt-

CLERK HANSON: 'Section 1, subsection 2. The Legislature shall provide for a system of high-quality, free public elementary and secondary schools. The Legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable. It shall be the duty of the Legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system.'" Mr. Chairman, subsection 2.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 1, subsection 2, of the Education and Public Lands proposal, that it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: This subsection is the mandate for implementing the establishment of our educational system within the state. And in this respect, as I noted earlier, it is similar to Sections 1 and 6 of our present Constitution. We might note here that the courts have construed the present Sections 1 and 6 not as a limitation on the Legislature, but as a mandate to the Legislature. And this section states that the Legislature shall provide for a system of high-quality, free public elementary and secondary schools. What do we mean by the words "high-quality?" They've been used as an instruction here to the Legislature to provide not just a minimum education system, a substandard system, but one that meets a contemporary need and is capable of producing well-informed citizens. Now, the committee recognizes that changing systems of financing the public school system are in the direction of providing equality of education and that this could lead to a reduction of the kind of education that we have. In other words, we recognize that, if in the future it is required that education be equalized across the districts, that this could jeopardize the quality of education, and we would not want to see this happen. And this is what we wish to safeguard against. And, therefore, we stressed in this Legislative mandate that the state shall provide a high-quality system of education. Now again, I'd like to point out that this is not untried ground that

recently adopted, states-and I quote: "The state shall provide for an efficient system of high-quality educational institutions and services". There are possibly some other words here that need explanation-the word "free". By the word "free" in subsection 2, it is understood by the committee to mean that those aspects of the elementary and secondary education which are essential to courses required by the schools for graduation shall be free of cost to the student. The words "public elementary and secondary" replace, in this article, the term "common schools", which was contained in the old Constitution-in the present Constitution. We feel that this is more precise. The term "common schools", back in 1889, referred primarily to the elementary school system. And also, we want to make it clear, by using the terms "public elementary and secondary", that the word "free" does not apply to all aspects of the educational system but that it applies to the basic education which the state is mandated to fund. In the second sentence of subsection 2, we've given a broad grant of power to the Legislature to provide for additional educational institutions and programs which it deems desirable. And according to the court interpretations of the present Article XI, Section 1, this right already rests with the Legislative Assembly under our present Constitution. So this is nothing new that is being added here. The last sentence of subsection 2 is directed toward the financing of the school system. Now, a great deal has been said about the Serrano-Priest case and other decisions across the land affecting the financing of the public school system. In analyzing our Montana finance structure, the committee found that there is great disparity between the level of school financing among the various districts of the state. This isn't something that has just come to our attention. For several years, across the nation, there has been a nationwide study being conducted on methods of financing public education. One of our members, Mrs. Cain, as probably most of you know, attended a meeting in Denver at her own expense, during the course of this Convention, to attend a meeting which solidified the results of several years of study on this very question. And whether the Supreme Court of the land rules on this matter or not seems to me to be beside the point. It's our feeling that the state should make every effort to insure that insofar as it is possible, equality of financial expenditures for schoolchildren of our state is implemented. Now, in the last sentence of subsection 2, we simply provide the means whereby this may be done. The Legislature is to provide,

by taxation or other means, and to distribute in an equitable manner funds for the funding of our school system. Now, I'd like to point out here that the language that we've incorporated here is very close to that of Section 6—that we have incorporated some of the language of Section 6 in this last statement. Clearly, the existing school foundation program does not meet the aims of equalizing educational burdens and benefits. A most recent study of our foundation program shows that the expenditures by the state actually subsidize districts that are wealthy more than they do districts that are poor and that, in fact, the foundation program aggravates factors which tend to make the level of education dependent on the wealth of the district. We use the term "full funding". What does this mean? Well, it means that the state will insure the funding of a basic minimum program. After the state has assessed the needs and established what a minimum program ought to be, we feel that the state ought then to provide, by whatever means it sees fit, for the funding of that program. And if we fail to do this, if we fail to provide even the minimum that we establish, then we fall far short of the goal that ought to be ours in education. The full funding requirement here will substitute equity and rationality for the confusion and for the inequities that have often plagued school financing in the past. And it will also do one other thing that I think is very important: it will free the local school boards from a preoccupation with matters of finance, so that they can focus on the real issue of education in our local communities. Mr. Chairman, I move the adoption of subsection 2.

CHAIRMAN GRAYBILL: Mr. Habedank.

DELEGATE HABEDANK: Mr. President. I move to amend subsection 2 of Section 1 by adding, in front of the word "system" on line 13, page 3, the word "basic"; and in front of the word "public" on line 20, page 3, the word "basic". Did you find that, Mr. President?

CHAIRMAN GRAYBILL: Yes, I find it. I don't know why I didn't have it up here. The Chair will allow it, but I do wish if you're going to make amendments on these things, you should have thought about them, unless there's something that comes up in debate. But I'll allow it.

DELEGATE HABEDANK: Mr. President. The explanation gave by the committee, through Mr. Harbaugh, shows that it is in-the

intention of the committee that the Legislature shall be required to fund a basic system of quality education. This is carried out by their comments as shown on page 12, where they say "the fundamental principle established, however, is that every child should have approximately the same opportunity to receive an adequate basic education." On line 17, they again say they wish to "insure the quality-insure the existence of a quality-basic educational system." On page 14 of their comments, they again say, on lines 4 through 7: "Once the needs for a basic quality system of elementary and secondary schools have been realistically assessed, the state has the obligation to guarantee that this minimum basic program be fully funded." I am a former member of the Montana School Boards Association. I was its President back in 1952. I, along with Paul Harlow and many other dedicated citizens--at least, I think I was dedicated, and I'm sure Paul was--worked long and hard in developing the foundation program of education. At that time, it was called to our attention by educators that Section 1 of Article XI of the Constitution provided that it shall be the duty of the Legislative Assembly of Montana to establish and maintain a general uniform and thorough system of public free common schools. And it was argued, not without merit, that it was the duty of the Legislature under our original Constitution to fund the common schools. But we made the objectives so high that the Legislature, nor nobody else, paid any attention to that mandate. I think that the comments as made by the committee, which clarify the fact that they do, in fact, intend to require only a basic educational program system, is good. But the comments are not before the people of Montana. And as they vote on this, I think they should be told that it is the intention of those on the committee, in their very fine draft, to require the educational-to require the Legislature to do full funding of a basic educational program and that the frills and the things beyond the basic program, as the Legislature determines it, can still remain with the people. And for this reason, I urge your support of the addition of these words to Section 2.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: Mr. President, will Mr. Davis yield?

CHAIRMAN GRAYBILL: Mr. Davis?

DELEGATE DAVIS: I yield, Mr. McDonough.

DELEGATE McDONOUGH: You were on the-this committee, were you not?

DELEGATE DAVIS: I had the privilege of serving on this committee, yes, thank you.

DELEGATE McDONOUGH: The last sentence of subsection 2, does that require the Legislature to put the Serrano versus Priest doctrine in at this time?

DELEGATE DAVIS: Well, let me read it. "It shall be the duty of the Legislature to provide, by taxation or otherwise, and to distribute in an equitable manner funds sufficient to insure full funding of the basic public elementary and secondary school system." It is my opinion, Mr. McDonough, it does not require us to put the Serrano versus Priest doctrine, whatever it is, in at this time. It seems to me that this section--the intent behind this section--was to provide for full funding of the foundation program. When I campaigned in my area, we found that one of the big problems we had was the lack of full funding of the foundation program. They had to come back in and have these various mill levies; and the first time in the history of our county, I think, we had to have three votes. So the intent there was to require the state to establish a priority for education that would make a full funding of the basic primary and elementary-secondary education programs, fully funded as a high state priority. Then, if they ran out of money at the other end, they'd have to cut their budget someplace else instead of cutting it on education each time and coming up with 90 percent or 85 percent and gradually downward, which causes us to increase our property tax levy and cause us a lot of difficulty on the local school level. Does that answer your question?

DELEGATE McDONOUGH: No, it does not, but I don't know if we can even answer it. I think--

DELEGATE DAVIS: It's my opinion, Mr. McDonough, it does not require us to put the Serrano versus Priest doctrine in at this time. They can go ahead with their foundation program; and hopefully the full funding really doesn't add anything to our present Constitution, where it says they will maintain a system. But it may be stronger language: we hope it is.

DELEGATE McDONOUGH: Thank you, Mr. Davis.
Mr. President.

CHAIRMAN GRAYBILL: Mr. McDonough.

DELEGATE McDONOUGH: I object to a number of words in this paragraph. I object to the words "high" and "quality". I object to the words "equitable manner". I object to the words "full funding". What it does, I think we get back to a basic point I've made before; this is a mandate to the Legislature. We're no longer on goals; we're no longer on preamble. We're on a mandate to the Legislature to do a certain thing, and we get back to Mr. Brazier's talk of the other day that when you use these type of adjectives in an equitable manner that you're actually you may be leaving it to the Supreme Court to decide what is "high quality"; what is distribution in an "equitable manner"; and what is "full funding" of the educational program? Now, that should be left with the Legislature and the Legislature only, and nobody else. They're the representatives of the people up here to decide fiscal matters, not the Supreme Court of Montana and not anybody else. It's the Legislature that has this power, and the Legislature should have it. And I'd like to make a motion, as a substitute for all other motions, that we strike the last two sentences in this subsection.

CHAIRMAN GRAYBILL: Just a moment. Mr. McDonough has made a motion to strike the last two sentences of subsection 2. That's the sentence, "The Legislature may also provide for other educational institutions, public libraries and educational programs as are deemed desirable, and it shall be the duty of the Legislature to provide, by taxation or other means, and distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system." Mr. McDonough, before I give you the floor, I'd like to point out that Mr. Martin does have an amendment coming in to strike the word "high" and the sentence that you're leaving there, so that may be of interest to you. Mr. McDonough has an amendment to strike the last two sentences of this section in their entirety, to delete them.

Mr. McDonough.

DELEGATE McDONOUGH: Mr. President. I think we're back again on specifics and details and what's constitutional and what's for good intents and purposes and what's legislative. Actually, the Legislature has all the power to do what it said in those two last sentences. And I'm sure they will, and I have full confidence that they will. There's going to be problems from time to

time, but if you leave them in as they are now worded, you're going to have more problems of constitutional-legal construction on any lawsuits relative to the application of these last two sentences. I think it's certainly sufficient in a constitution to direct the Legislature to provide for a quality, free public elementary and secondary schools. And really, it doesn't have to say any more than that; and when you get more detail than that, you're just opening the door to various constructions, and so forth. That's all they have to do. If we have confidence in the people of this state to elect a Legislature that should represent them, then I don't think we have to say any more than this in this subsection. Thank you.

CHAIRMAN GRAYBILL: Mr. Harbaugh.

DELEGATE HARBAUGH: Mr. Chairman. I would rise in opposition to this motion to delete. It seems to me that this effectively strips the intent of all that we have said in the goals; that it strips the intent of the Education Article. I wonder if the Legislature in the past—if we look at history, I wonder how Mr. McDonough can say that he has confidence in the work of the Legislature in the past, when we think in terms of what has happened to the funding of education and, in particular, in the funding of the school foundation program by the Legislature over the past years. I don't share that confidence. Education has taken a back seat long enough in this state. Always when we come down to the end of the session, education takes what's left over after all of the other programs have been funded. And I think by putting in the Constitution a mandate which says that we will establish a basic program, and that the state will fund that program, is very essential. These last two sentences are no more statutory than the sentences which are contained in the present Section 6. If you look at the present Section 6, you will find that it says it is the duty of the Legislative Assembly to provide, by taxation or otherwise, sufficient means in connection with the amount received from the general school fund to maintain a public, free common school in each organized district in the state for at least 3 months in each year. Now, this isn't nearly as statutory, it isn't nearly as specific as that is. And on the one hand, he argues that we're being too specific; and on the other hand, he argues that we are inviting court tests. It seems to me that this is an inconsistency in the argument, and I would speak against deleting these two lines—two sentences—from the report.

