The Development Of Local Government In Montana 1889-1972

Patricia Chvatal

Carroll College

Follow this and additional works at: https://scholars.carroll.edu/history_theses

Part of the United States History Commons

Recommended Citation

https://scholars.carroll.edu/history_theses/106
THE DEVELOPMENT OF LOCAL GOVERNMENT
IN MONTANA 1889-1972
by
Patricia J. Chvatal

A thesis
submitted to
the Department of History
Carroll College
In partial fulfillment
of the requirements for Academic Honors
with a B.A. Degree in History

Helena, Montana
April 10, 1972
This thesis for honors recognition has been approved for the Department of History.

April 10, 1972
I wish to express my appreciation to all who aided me in this study. I am grateful to Mr. Jerry R. Holloron, research analyst for the local government committee of Montana's Constitutional Convention, who spent many hours discussing this thesis topic with me. The encouragement and help he offered in obtaining research material is immeasurable. I wish to express my gratitude to Rev. William J. Greytak for his patience, understanding, and guidance in directing my work on this thesis. Without his encouragement, this project would never have been completed. I am especially indebted to the late Dr. Thomas A. Clinch. His love for Montana and the history that captures the spirit of the state prompted me to write a thesis concerning Montana. Finally, I wish to thank my parents who shared their love of history with me.

This thesis is dedicated to the memory of Dr. Thomas A. Clinch
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter I. The Early History of Montana</td>
<td>5</td>
</tr>
<tr>
<td>Chapter II. Various Problems that Confront Local Government Units</td>
<td>18</td>
</tr>
<tr>
<td>Chapter III. Constitutional Solutions for the Dilemma of Local Government</td>
<td>30</td>
</tr>
<tr>
<td>Chapter IV. The Future of Local Government Units in Montana</td>
<td>40</td>
</tr>
<tr>
<td>Appendix I</td>
<td>54</td>
</tr>
<tr>
<td>Appendix II</td>
<td>55</td>
</tr>
<tr>
<td>Appendix III</td>
<td>59</td>
</tr>
<tr>
<td>Appendix IV</td>
<td>62</td>
</tr>
<tr>
<td>Appendix V</td>
<td>63</td>
</tr>
<tr>
<td>Selected Bibliography</td>
<td>67</td>
</tr>
</tbody>
</table>
INTRODUCTION
I have explored in this thesis the historical development of local government in Montana since territorial days. Included in this research is the strategy and thinking of the delegates of the 1889 Constitutional Convention. Their decisions culminated in the adoption of the local government article that is found in Montana's present constitution. The historical relationship between the local levels of government and the state levels is explained with evidence presented indicating that constitutional problems have arisen between these two governmental units in Montana.

I found it important to view the development of local government in Montana through the disciplines of political science and history. Although this thesis deals primarily with the historical aspects of local government, the views of political science become intertwined with the historical reality. A mingling of the two fields has given me a concise and meaningful insight into the dilemma of local government and has helped me to project into the problems of municipalities of the future.

In viewing local government through these academic disciplines I became aware of many problems that are evident in the present local government sections of the Montana Constitution. Election of county officials, pay raises for these individuals, county and city indebtedness, and voting requirements of citizens are all included in the present constitutional provisions for local government. Yet, the basic structure and power of the local government
unit is not mentioned. This lack of description has resulted in local units presenting solutions to their problems to the legislature for approval before action can be taken. The legislature, in turn, has been confronted with a mass of bills of a local nature, many of which they do not understand because of inadequate research material and little time.

To clarify the problems of local government in Montana, I have researched the history of government in the city of Helena. The stunted development of local government within this city can be plainly seen when viewing the local process in its entirety. Problems have arisen because of delays in waiting for the legislature to decide rather than allowing Helena to proceed with solutions to her own problems. Although certain limitations must be placed on local government units, it is evident from the study of the city of Helena that these units must be granted some authority in handling their own situations.

Various solutions to the dilemma of local government are available to Montana cities. The possibilities of constitutional residual power, home-rule, and charter plans are readily applicable in localities. Through detailed research I have reviewed these theories, and have projected into the feasibility of each in Montana communities. The possibility of residual power seems to be the most adequate solution for the problems that confront local government in this state. By viewing the historical value of local government units that are now established, it
seems evident that the present situation is poor. Local government units must be given more authority to handle local problems. To become a viable unit of authority, capable of handling increasing problems, the basic provisions for local government must be placed in the constitution. These can be supplemented by statutory law.

The delicate problems of local government are emerging into the political scene in Montana. Cities, towns and counties are becoming centralized governmental units without the power to function as such. Local government is floundering. Without the guidance and foresight of the individuals who are now framing a new local government article for the Constitution of Montana, local government units will not be able to successfully confront the problems of the next fifty years. The need for a government that is established on a foundation of a constitution restricted to fundamentals is evident. The need for state and local government to deal effectively with current and future responsibilities is urgent.

Little has been written about the dilemma of local government. In order to research into the problem thoroughly I interviewed several individuals who are considered experts in this particular field. Included in these interviews were Mr. Dan Mizner, executive director of the Montana League of Cities and Towns; Mr. Jerry Holloron, research analyst for the local government committee of the Montana Constitutional Convention and an expert of
local governments; and Mr. Walter Anderson, city manager of Helena, Montana. The interviews gave me a kaleidoscope of opinions and views although all of these gentlemen agreed that the difficult problems confronting local government must be resolved.

In addition to these interviews, I have had the opportunity to be an intern for the local government committee of the Montana Constitutional Convention. This position has allowed me to observe citizens' feelings concerning local government, expressed through the means of citizens' proposals and citizens' testimony to the committee. In doing research for the committee itself, I have been able to observe varied descriptions of the role of local government in Montana and various solutions to the problems.

A combination of the various sources of information has led me to several conclusions which are contained in this thesis and are explicitly expressed in my proposed local government article. Hopefully, this thesis will offer insight into the dilemma of local government with concepts for possible solutions to the problem.
Chapter I. The Early History of Montana
The present constitution of the state of Montana was formulated in 1889, and is in existence to the present time. This document was the culmination of three formal articles drafted during the process of achieving statehood. Two attempts to gain statehood were made through citizen initiatives in 1866 and 1884. Montana's first Constitutional Convention, authorized by the United States Congress, took place in 1998.1

In order to view Montana's failures, and final success, in obtaining statehood it is beneficial to view the early history of the state. This study points to the diversity and vastness of the area. Fur trappers were the first travelers into this land. These pioneers trapped in Canada which, until 1763, was controlled by France. By virtue of the Treaty of Paris of 1763, Britain became possessor of Canada and the fur traders of the western frontier of Canada began to migrate southward into Montana, North Dakota and Idaho. The area of Montana was ideal for trapping and trading. It was sparsely populated country: the few inhabitants were Indians. It had no laws. The area was near an accessible fur company, namely the Northwest Fur Company, which was located on the western seaboard near the present city of Portland, Oregon.

The topography of the land extending west of the Mississippi River to the Pacific Ocean was little known until the United States purchased it in 1803. This frontier was obtained from the French

and seemed to satisfy the increasing ambitions of the young United States. President Thomas Jefferson immediately urged congress to authorize an expedition to explore the newly acquired territory. This famous expedition was authorized and Jefferson chose Meriwether Lewis and William Clark to lead it. The expedition extended from 1804-1806 and made available to the United States factual knowledge concerning the western portion of North America.

Lewis and Clark were instructed to look into the possibilities of starting an American fur trading company. Their travels, especially in the area of Montana, confirmed President Jefferson's assumption that a great abundance of furs was available in this newly purchased area. Because of these reports, Manuel Lisa, with the assistance of John Colter, was able in 1807 to establish Fort Lisa at the mouth of the Big Horn River. It was to be one of the first of many unsuccessful fur trading outposts in Montana. Various Indian tribes including the Blackfoot tribe destroyed this fort as well as others that were later established at various tributaries in the state. The fur industry did not last long in Montana. The styles of the fashion world changed and the fur market began to decline because of the growing awareness of other fabrics. The fur industry collapsed in 1840. Although this industry actually opened the door to western expansion, it was not successful in Montana.

The area of Montana was not appealing to the thousands of immigrants traveling to Oregon. The unpredictable climate, hostile

---

Indians, and treacherous mountain ranges, combined with the rugged corridors into the country discouraged settlers and led them to travel further west to Oregon and California. The only inhabitants of this rugged country were the Indians and the mountain men, many of whom had been trappers. The discovery of gold about 1856 at Gold Creek (midway between the present cities of Helena and Missoula) and on Grasshopper Creek in 1862 brought Montana into the "roistering '60's when the territory was full of gold, Indians, whiskey, and fugitive rebels." Camps and towns rose swiftly around gold discoveries. The camp of Bannack, Montana's first capital and the site of the first territorial legislative sessions in 1864, organized on Grasshopper Creek. Concomitant with the discovery of gold was the fact that oxen were brought into the territory in 1860. Because of the rich grasslands available, Montana's beef market soon became a substantial industry.

Montana's population was growing swiftly because of the mining and cattle industries. The United States Congress recognized this growth, and in May, 1864, Montana was declared a territory of the United States. Because of this action, Montana was now separated from Missouri, Nebraska, Dakota, Oregon, Washington, and Idaho. Where previously it had been, at one time or another, a part of these six, it now was known to the nation as the Montana Territory.

---


4 Ibid., p. 39.
In territorial days the federal government retained supervision over territorial affairs while local government within the territory was in the hands of the people. After Montana was declared a territory, a legislative session was called in Bannack. At this convention all the principal functions of local government were placed in the hands of the county commissioners who were elected by the people. Immediately following the convention, Virginia City and Nevada City were incorporated with full provisions for city offices and city government.

Although Montana had been declared a territory with limited governing functions the citizens of Montana were not satisfied. These people were independent and rebelled against the restrictions that could be placed on their territory by the federal government. Without the needed authorization from the United States Congress, the citizens of Montana called for a constitutional convention in 1866. The eagerness and desire for statehood prompted the delegates to quickly draw up a preliminary draft of a constitution for Montana. This document was patterned after the proposed Colorado Constitution with modifications borrowed from New York and California. This constitution was sent to St. Louis, Missouri for printing but was lost en route and never found.

6 Ibid., p. 205.
7 Montana Constitutional Revision (Bozeman, Montana: Artcraft Printers, 1968), p. 3.
Although discontent still prevailed in the territory, nothing further was tried to achieve statehood until 1884 when the Montana legislature, which had been established because of the territorial degree, acted on its own initiative to assemble a second constitutional convention. The constitution drawn up was modeled largely upon the constitutions of Colorado and California. The strong local sentiment felt toward statehood accounted for the fact that the constitution was ratified by an impressive majority of Montanans (15,500-4,266). This document was forwarded to Washington D.C. but was a victim of a political dispute in Congress. Montana was again refused statehood.

The growth of population in the territory of Montana, combined with a new party in control of national politics, prompted Congress to pass an omnibus bill on February 22, 1889. This authorized the territory of Montana to call a convention for the purpose of drawing up a constitution. The finished document would have to be presented to Congress by October, 1889. Thus, Montana’s third Constitutional Convention began on July 4, 1889 and concluded on August 19, 1862.

A great change had occurred within the territory and the nation since the territory of Montana was created in 1864. The Homestead Act of 1862 opened the territory to western immigration.

---


9 The electoral college had an equal number of Democratic and Republican votes. President Cleveland, a Democrat felt that the addition of the Republican state of Montana could possibly prevent his reelection.

The number of immigrants who took advantage of the Homestead Act, coupled with the improved farm implements expanded the agricultural industry in the eastern portion of the territory. Although large scale ranching had increased, farming interests were becoming important as well. The ranchers were fearful and resentful of the farmers. The extension of railroads through the Montana territory to the Pacific Ocean helped enhance the rapid population growth that had occurred.  

The discovery of more and more mineral wealth resulted in the overnight growth of hundreds of mining towns. Although many of these died as quickly as they rose, some, such as Helena, continued to grow after the gold fever had died. During the 25-year territorial period (1864-1889) nine of Montana's historical cities that had originally begun as mining towns were chartered by special legislative acts.  

Fifteen more were organized under a general statute in 1887 and all charters were reorganized by an 1895 general incorporation.  

In 1889, the majority of the people in Montana were engaged in mining and ranching. Although cities were becoming larger, Montana was primarily an agrarian state. To realize why various articles were adopted in the constitution of 1889, it is important

---


13 Ibid., p. 81.
to realize that mining dominated the minds of pocketbooks of the selected delegates. Second, only to mining in influence was stock raising and agriculture. Nine delegates claimed agriculture as their sole livelihood and thirteen others had interests in the expanding industry although they did not consider it their primary endeavor. The influence of mining and agriculture was evident when issues vital to their interests were debated.

The convention had a majority of lawyers, although other occupations were represented (refer to Appendix I). The Democratic party had 38 delegates while the Republican party had 35 delegates and the labor and independent factors had one delegate each. The Republican party tended to support agriculture and created a coalition that was composed primarily of delegates from the eastern section of the state. This coalition created a conflict between the delegates from the larger counties compared to the delegates from the smaller counties. A clash between the delegates themselves resulted because of simple geographical differences.

The main purpose of the Constitutional Convention of 1889 was to write a document outlining a basic form of government for Montana. The primary view maintained by the delegates concerning the convention emphasized that "the rights and privileges of the different members of the state family must be thought of and provisions must be made for them. The widest possible liberty for all members of the family"


15 Ibid., p. 43
without interference with the rights and privileges of any must be a part of the plan." Although there were many small unincorporated towns, there were few large cities in Montana. Because agriculture and mining were the predominant interests in the state, few delegates were concerned about cities and most failed to project into the future. They were unable to envision the increase that has occurred in Montana's urban areas.

The members of the 1889 Constitutional Convention formulated a constitution that provided for an organization of local units of government working within the framework of the state government. The particular section that deals with this has created crucial and troublesome problems in the state of Montana. The constitutional provisions are not adequate to meet the needs of the various forms of local government units in the state.

The Montana document specifies that details for county and city organizations are to be prescribed by future legislation without the benefit of any orderly state overview of local affairs. Local control has been curtailed because of the authority that the state legislature harbors over cities and counties. The present Montana constitution does not deal with the critical questions concerning the power and authority of government and the


17 Dale Harris, Montana Business Quarterly (Summer, 1971), p. 15.
division between state and local levels of government. Consequently an inadequate pattern of state and local government relationships continues to govern both levels.

The background of the governing diversity can be found in the article of the constitution that deals primarily with local government: Article XVI of the Constitution of the State of Montana which is entitled Counties – Municipal Corporations and Offices (refer to Appendix II). Article XVI creates two units of local government - counties and municipalities. The document seems preoccupied with the detailed provisions for the organization and procedural mannerisms of county government. Only one reference is made in this article concerning the government of cities and towns (Section 6). Elsewhere the constitution limits municipal debt and prohibits certain state interference in municipal affairs. No references are made in the constitution concerning the powers of local government or the legal relations between state and local government. The constitution mentions vague provisions for local government in other sections of the Constitution (refer to Appendix III).

The framers of Montana's constitution expressed their assumption that the state would remain a static society through their

19 Ibid., p. 21.
lack of provisions for local government. Although the constitution seems to anticipate the formation of some active township governments in Montana, it indicates so only briefly and reluctantly. Possibly this is an indication of the sentiment felt toward local government in the 1880's. The people of 1889 distrusted city and state functions and were quick to put severe restrictions on local government. The present constitution reflects this lack of confidence in the people by denying local government adequate control over local affairs.

The impact of limited power for local government units can be seen in the stunted growth of cities in Montana. The city of Helena portrays well the effect that restrictions, which have been placed on it since its incorporation, have had on its development.

A large gold discovery along the present street of Last Chance Gulch actually created the small town of Helena. Because of its centralized position, Helena blossomed not only as a mining town, but also as a trading center for western Montana. By 1889 Helena was firmly established as the financial center of Montana. The city boasted that over fifty millionaires, who had gained their fortunes from mining and trading, resided in Helena during the latter part of the nineteenth century.

---

22 Ibid., p. 9.
city government was originated, the bankers and merchants directed local affairs, again showing the influence of trade in Helena's society. A powerful Board of Trade was organized to further protect the interests of businessmen. For the first sixteen years of Helena's existence, all taxes were collected and laws enforced by Lewis and Clark county officials. These officials were controlled by individuals with mining and trade interests.

On March 7, 1882, the 600 citizens of Helena voted for a city charter. This proposal was successful and Helena became an incorporated city with a city-council-mayor system of government.

Although the incorporated city of Helena, like various other municipalities in Montana, established a city governing body in its charter, it has little power in its own affairs. The Montana constitution dictates that the inhabitants of a city may elect officials for their city government. This, Helena does. Anything else pertaining to city governance is controlled by statutory laws. These can be found in the Revised Codes of Montana which contains the 1500 laws that have been passed by the legislature to allow cities to function more smoothly. These laws have

\[^{23}\text{Irvin Shope, Historical Helena (Helena, Montana: Thurber Printing Co., 1964).}\]
\[^{24}\text{Ibid.}\]
\[^{25}\text{Ibid.}\]
\[^{26}\text{Interview with Mr. Dan Mizner, Montana League of Cities and Towns, October 27, 1971.}\]
taken the basic governing functions away from Helena. The city is
allowed to provide some services necessary for a city to function. But
it is hindered from performing other basic duties because the city is
not given any explicit governing powers in the present constitution.

The constitution drawn up by the 1889 delegates was the product
of varied interests. No one interest, such as agriculture or mining,
can be singled out as the single element which dictated the final form
of the constitution. Business interests, political affiliations,
personal convictions, and places of residence all played their role in
the final shape that the basic law of Montana was to take. The recon-
ciliation between the divergent population of counties and economics
of the mining counties of the West and the plain counties of the East
proved to be the crucial test of the convention's ability to compromise.
Compromise resulted in a constitution that did not concentrate on one
area solely.

The issues which confronted the convention were decided by the
nature of the matter in question. The problems of municipalities
were not realized in 1889 and the delegates lacked foresight
in providing guidelines for cities in the Montana constitution.
The 1889 Constitutional Convention stated that the convention
would establish "a constitutional pattern for future contributors

27 Brian E. Cockhill, "An Economic Analysis of Montana's Con-
stitution" (unpublished Master's dissertation, Dept. of Political
Science, University of Montana, 1968), p. 44.

28 Montana Constitutional Revision (Bozeman, Montana: Arctraft
to society." They seem to have fallen short of their goal by providing inadequate provisions for local government. These have been modified only slightly since 1889, thus causing local government to be caught between sketchy fundamental law stated in the constitution and inadequate statutory law provided by the legislature.

---

29

After viewing the early history of Montana it becomes obvious that the constitution of this state was drafted to comply with the problems that were occurring at that time. But the situation in the state of Montana has changed during the past 82 years of statehood. A shift in population has resulted in the creation of a predominantly urban state. (Refer to Appendix IV). This shift, which has occurred because of an evolution from a primarily agrarian state to one which emphasizes industrial and agricultural growth, has created new governmental problems for local units. These new situations are difficult to confront because of the present constitution. Local government units play a more immediate role in the life of a citizen than the remote state government. These units need broader powers to govern local affairs.

The fundamental question of local government autonomy and flexibility confronted and answered before self-government becomes effective. Some states have attempted to solve the problem of local autonomy by advocating that "although local governments possess varying degrees of autonomy, they are creatures and agents of the state. Their functions, powers, and structure are determined by the state constitution and by statutes of the state legislature. They have no authority other than that granted by the state."¹ The questions of the structure and the limitations of local government must be answered before autonomy can be reached.

Municipalities possess no power unless it is given to them.

Local power must come from the state constitution or the legislature. Because the Montana constitution is silent on the subject, local government units depend entirely on the legislature. The doctrine that describes this is known as Dillon's Rule. It states that "local governments possess only that power expressly granted them, necessarily or fairly implied or essential to accomplish the government's objects and purposes." This traditional theory has been upheld by the Montana Supreme Court when it stated: "cities and towns are creatures of the legislature and have only those powers which the legislature confers by express declaration." The Dillon Rule has severely handicapped the development of local government in finding solutions to pressing public problems. Stripped of freedom to act on purely local matters, towns and cities have forced on the legislature a maze of bills, dealing with local legislative matters. The Montana League of Cities and Towns estimates that over 100 bills affecting cities and towns were introduced into the 1971 legislature with over 60 of these becoming law. Over 1500 laws have been passed by the Montana legislature since 1889 to draw guidelines and restrictions for the

---


proper functioning of cities. Unfortunately, many of these laws do not adequately solve the problems of local government. It is difficult for members of the state legislature to realize the particular problems facing individual cities and towns and to act in the wisest manner in each case.

An approach conflicting with the Dillon Rule has been briefly evident in certain circumstances in Montana. This theory is based on historical evidence that cities and towns have certain inherent rights apart from those granted by state constitutions and laws. The theory confirms the concept that local units can perform certain functions without constitutional or legislative authorization. Unfortunately, the Dillon Rule seems to be the predominant theory in Montana.

Another factor that has added confusion to the dilemma of local government is the enactment of an amendment in 1922 which added Section 7 to Article XVI. This amendment granted broad powers to the legislature regarding the authorization of new forms of local government for counties, cities, towns, or consolidated organizations, subject to local referendum. The legislature, though, has used this power sparingly. It was used in 1923 and again in 1931 when special acts authorizing city-county consolidation

---

6 Interview with Mr. Dan Mizner, Montana League of Cities and Towns, October 27, 1971.


for Butte and Silver Bow county were adopted. In general the localities have rarely sought new enabling legislation to choose the structure of their local government. Although this amendment provides the possibilities for broader control extended by local government, the opportunity has not been utilized. This is not only the fault of the legislature, but of the individual units of government as well.

Another crucial element that presently is hampering the efforts of local government is the restriction placed on finance, revenue, and public debt. The costs of local government are rising steeply and at a faster rate than any other level of government. The main source of revenue for cities and towns originates from property tax. This does not provide adequate funds to help defray rising costs of local government. The Montana Constitution does not specifically restrict the property tax levying power of local government. Yet it does not state that those units have powers of taxation. Local government does not have the authority to reevaluate the financial situation and to draw guidelines to alleviate it. Article XII, section 4 has been interpreted to prohibit major forms of state aid to local government. The local government is left with no means to provide an adequate income and yet no help comes from the state government.

---

9 1923 Laws of Montana, Ch. 160, 1931; Laws of Montana, Ch. 2.
10 Lucile Speer, We, the People... (Bozeman, Montana: Montana State University, 1971), p.77.
Government financing seems to overlap. It duplicates and triplicates, resulting in total inefficiency and added expense to many. Minimal funds are allowed for public construction and street control, with counties and the state building bridges even in the cities. Some municipalities can afford neither storm drains nor adequate street maintenance. Dependence on the state for finances seems to complicate the situation of the local government on both city and county levels.

The present local government provisions in the constitution are confusing and inadequate. They do not provide or allow for sufficient means for local government to function. Several problems have arisen in Helena because of the lack of local governmental provisions in the present Constitution for Montana. The growth of this city has been hindered because of restrictions imposed on it by the vague terminology in the Constitution and the Revised Codes of Montana. An example of these restrictions can be seen in Section 11-509 of the code, which states:

No parcel of land which at the time such annexation is presented to such council or legislative body, is used in whole or in part for agriculture, mining, smelting, refining, transportation, or any industrial or manufacturing purpose shall be annexed under the provisions of this act.\[12

This particular section has caused problems within the community of Helena. The provision limits the city from annexing property outside city limits. The city of Helena is growing and needs additional land. Because of the geographical restrictions

---

that surround the city on two sides, expansion is only feasible in the northeast. Unfortunately the land that could be used is primarily engaged for agriculture. If the owner of a desired plot of land gives permission to sell the land to the city for the purpose of housing developments, it is considered lawful. Yet the owner has the right to sell the land with the stipulation that neither housing nor business areas be built on his property. The city can do nothing, for this complies with Section 11-509. The major result of this restriction has been a splattering of housing developments outside the city of Helena. An orderly pattern of growth has been curtailed and problems of drawing individuals to the area has been restrained because of the inability of the city to obtain land for expansion.

Helena is a capital city with many state agencies, including the capital building itself, within the city boundaries. Article XII, Section II of the Montana Constitution states that:

The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries shall be exempt from taxation... Because of this article the state agencies do not contribute financially to services offered by the city (police, fire, etc.) which are paid for by tax money. Yet these agencies demand and do receive these services. This is a major problem encountered

---

13 Interview with Mr. Dan Mizner, Montana League of Cities and Towns, October 27, 1971.
14 Montana State Constitution, Article XII.
15 Interview with Mr. Dan Mizner, Montana League of Cities and Towns, October 27, 1971.
in any capital city.

Article XIII, Section II continues to state that:

...any property used exclusively for educational purposes, places for actual religious worship, hospitals and places of burial, .in the state of Montana may be exempt from taxation.16

It can be seen that schools and churches do not have to contribute financially to the services rendered by city departments. They, too, demand these services. Helena has 43 churches, many primary and secondary schools, and two institutions of higher learning. It seems inconsistent that the individual property holders in Helena pay large amounts of tax money to receive the same services. Yet the state, church, and educational institutions pay nothing.

The problem of city and county cooperation must be resolved to achieve a more standard economic base. The division between the city of Helena and Lewis and Clark county can be cited. A simple structure, such as a library, has caused intergovernmental disorder. Presently Helena has a library within the city. Any one who lives outside the city limits must pay a set fee to use the facilities of this building. The occupants of the county are taxed for the library indirectly through property taxes. Yet they have to pay for their library services.

16 Montana State Constitution, Article XII.
17 Interview with a Secretary, Helena Chamber of Commerce, February 1, 1972.
18 Ibid.
The citizens of the area are being deprived of a basic service of the city which they financially support.

Neither the state constitution nor the code of laws of the state make any reference to intergovernmental cooperation. The situation is becoming more serious with the ever-rising problems of air, water, and land pollution of the environment. What obligations does the city have to pay the cost for waste-disposal and clean water? Should the state and federal government participate in the funding of projects concerning the environment? These questions are becoming urgent. The present guidelines are not adequate to meet the demands for the increasing problems. The city of Helena, like other municipalities in the state, does not have the authority to handle such problems.

Any city in the state of Montana has the power to create ordinances. (Counties do not have this privilege). Ordinances are laws of the city that are determined by the city council and are used to govern the people of the city. This, at first, seems to grant a significant degree of power to city. Yet, when referring to the Revised Codes of Montana, limitations become evident. Section 11-901 states that:

City or town councils have power to make and bypass all bylaws, ordinances, orders, and resolutions not repugnant to the constitutions of the U.S., of the state of Montana, or provisions of this title.

Ibid.
The limitations of the provisions of the title are stated in Section 11-902-1024, as they explicitly state that city and town councils have certain powers. The following sections declare that:

11-902 - the city or town council has power to levy and collect taxes for general and special purposes in all property within the town or city subject to taxation under the laws of the state.

11-903-904 - the city or town council has power to license all industries, pursuits, professions, and occupations, and to impose penalties for failure to comply with license requirements.

11-905 - the city or town council has power to build or hire all necessary buildings for the use of the city or town, and to heat and light the same.

11-906 - the city or town council has power to lay out, establish, grade, pave or otherwise improve streets, alleys, avenues, sidewalks, parks, and public grounds and vacate the same. (This section does not give the council power to incur indebtedness or issue bonds for street purposes.)

11-907 - any town or city council may, in its judgement, when it appears to the best interest of town or city and the inhabitants thereof expressed by resolution duly and regularly passed and adopted, change the name or number of any street or avenue except when 51% of the property owners object to the change.

11-909 - the city council has power to provide for lighting and cleaning the street, to regulate the use of sidewalks, to regulate the disposition and removal of offensive material from public ways and ground.

Further sections of the Revised Codes of Montana allow city councils to regulate the fast driving of horses, animals, and vehicles within the city (11-912), to regulate the numbering of houses and lots (11-916), to regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement (11-983), and to license and regulate soft drink establishments.
at pool and billiard halls (11-987). This list is continuous, as there are 120 statutes alone governing city councils in the Revised Codes of Montana.

The city councils are allowed, through these laws to maintain and govern jails and provide for adequate fire protection. They are entrusted with providing for the basic needs of a city, including the regulation of water (11-917). Although these local units have some power in areas of city governance many statutes are inadequate dealing with matters that have no relevance in the world of 1972. It is difficult for cities to provide adequate guidelines without the authority to do so. City councils, the direct governing body of municipalities, do not have any significant power.

The influence of the Revised Codes of Montana on local governing bodies can be seen in the various ordinances passed by the city council of Helena. In 1897 Ordinance 20 was enacted, which prevented ball playing and sliding on the streets of the city. 20 Ordinance 248 (June 13, 1889) provided the city of Helena with a permanent water supply. 21 In June of 1932 Ordinance 1174 was passed which prohibited parking for more than 60 consecutive minutes between the hours of 9 a.m. and 6 p.m. 22 Ordinances passed by the city council in Helena have not actually served as the governing laws of the area.

21 Ibid.
The city council is prohibited from performing duties important to the functions of a growing municipality. Typical matters that are brought before a city council meeting in Helena can be seen in the minutes of December 1, 1962. The council dealt with the monthly reports of the city electrician and city librarian and the balance of the city treasury was reported. The remainder of the meeting dealt with a review of claims.

In viewing the meetings of the city council of Helena and the ordinances of the same city, it becomes evident that the present city government structure is not adequate for the expanding needs of a growing municipality. Yet a city can do little. Ordinances must conform to the constitution and state laws. If it does not, the ordinance must be presented to the legislature for approval. Many times this method is not efficient, for it is time-consuming and the legislature often refuses the request in fear that local government is becoming too powerful.

---

23 Ibid., December 31, 1962.

The city of Helena, like most cities and towns in the state of Montana, is powerless as far as the governance of its own city. Helena, is not able to expand or to proceed with simple governmental processes because of the limitations placed on Montana cities by statutes of law. The Montana legislature has turned a deaf ear to local government problems. Units of local government - cities, towns, and counties - seem to be standing alone. It is obvious that they are not allowed to govern themselves yet they are not given adequate governance provisions though legislative acts and constitutional amendments. Local government seems to be tied to a maze of archaic methods that many times only provide a job and not a service.

---

Hearing of the Local Government Committee, Montana's Constitutional Convention, Mr. H. L. Pierce, concerned citizen.
Chapter III. Constitutional Solutions For the Dilemma of Local Government
From what has been discussed, hopefully it has become apparent that local government units in Montana are hindered from providing simple services to their respective locales because of detailed statutory and constitutional regulations. These governmental units are not serving their people effectively. With the power and authority to govern local affairs, city, town, and county units could soon be functioning in limited governmental capacities. Other states have improved the local government situation by granting broader powers to local government units. Thus these units have the authority to govern local affairs. This approach could give vitality and freedom to units of local government.

In defining and outlining the powers that should be granted, three basic requirements must be recalled in order to provide a sound local government article in the Constitution. The new article should grant power to local government in order to stimulate vigor in meeting new and expanding responsibilities. Presently the constitution prevents community groups (such as the League of Women Voters) and elected officials from taking immediate action concerning pressing community needs. It is essential that the new article give freedom to the various governing groups. With a knowledge that they have the power to

---
solve the problems confronting local government, the concerned citizens and elected officials can create innovative solutions to the traditional, as well as the unforeseen, governmental problems.

The article on local government must permit maximum cooperation between units in meeting problems that cannot be handled properly by a local unit acting alone. Montana has 56 counties whose populations range from 675 people in Petroleum County to 87,367 people in Yellowstone County. Duplication of facilities and duties in adjoining counties results in large debts in individual localities. Intergovernment cooperation would allow counties flexibility in joining together for certain functions (such as assessing lands) and combining facilities (such as waste-disposing plants). Cooperation between counties is not equivalent to consolidation of counties where two counties can merge into one. Rather intergovernment cooperation would allow greater economic freedom, and yet independence, for counties and cities.

A sound governmental article would free the legislature from the burden of acting on many local bills. The legislature has

---

3 Ibid.
4 Ibid.
5 Public hearing with the local government committee at Montana’s Constitutional Convention, Mrs. Jean Anderson, lobbyist for the League of Women Voters of Montana, January 26, 1972.

spent hours and hours of their short 60 day sessions in research and debate on issues of a local nature. They are hindered from drawing up an adequate law many times because they are unable to view and investigate the entire situation. This has not only resulted in poor laws being forced on individuals of a community, but also has curtailed the legislature from acting on matters of importance to the entire state. Freedom concerning local matters would help the legislature become more responsive to the needs of the state in general.

A local government situation that follows these guidelines and produces adequate laws is essential and vital to Montana. Several options are available and can be utilized in writing a local government article for the constitution of Montana. The most basic form of local government autonomy can be found in "home-rule" provisions, commonly referred to as "local government autonomy". Constitutional home-rule, in its most comprehensive form, is self-executing as to municipal powers and procedure. It permits local government units some initiative in solving problems that concern the particular locality. Home-rule does limit local government by providing specific guidelines to follow rather than allowing them to establish their own margins of self-government.

Constitutional home-rule systems have been established in

---

6 Interview with Mr. Dan Mizner, Montana League of Cities and Towns, October 27, 1971.

nearly half of the states, beginning with Missouri in 1875 and California in 1879 and ending with Alaska and Hawaii in 1959. Many of these states have encountered severe legal problems concerning their constitutional provisions of home-rule. The "power doctrine" for home-rule cities seems vague in many cases. The authority is vested in what is explicitly or vaguely mentioned in the constitution of the state. To give home-rule a precise meaning, the judicial branch of the particular state that has encountered difficulties has been forced to develop a legal distinction between municipal affairs and matters of statewide interest. In most instances the interests of the state have held precedence and the local government has been deprived of authority. Local government is a creature of the state. It has no power unless it is given to it by the state legislature. Home-rule, in its strictest sense, leaves a great deal of interpretation to the judicial system rather than to the legislative. This not only burdens the judicial branch of the government with excessive work, but takes the power of setting the guidelines for local government away from the legislative branch. Home-rule is a fairly adequate, but not a completely satisfactory solution for the problems of local government.

A complementary addition to the traditional form of home-rule is the concept of "residual powers". This theory utilizes city charters and classification but deviates from the home-rule approach of allowing cities and counties to do anything that is

---

8 Ibid.
9 Ibid.
permitted in the constitution. Residual powers, instead, allow cities and counties to have all power over their affairs except that specifically denied then by law or the constitution. The difference between the two political theories stems from the fact that if a city wants to try something new and unheard of, under strict home-rule provision, it would have to get legislative approval because the constitution does not specifically say that it could be done. Under residual powers a city could go ahead and do it unless it was prohibited in the constitution, or unless the legislature stepped in and denied it.

The residual power theory is a broadly based concept that allows adequate freedom for local autonomy. The approach is based on the premise that powers should be shared by local and state government, rather than allocated or parcelled out between them. The residual powers concept, which has also been termed the "shared powers" concept, has gained great support from proponents who advocate increased local authority. The Montana League of Cities and Towns, an organization that represents most cities, towns, and counties in Montana, has recommended a residual power concept to be included in the Montana Constitution. They advocate that:


municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by legislative law.\(^\text{12}\)

The Montana Constitutional Convention Revision Committee, after a great deal of research concerning the problems of local government in Montana, has drawn up a proposal that confirms the residual power theory. It states that:

A unit of local government may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to units of local government generally or to its class of local government, and is within such limitations as the legislature shall establish by general law.\(^\text{13}\)

A supplement to residual power is the state-enacted charter system (residual power through constitutional provisions, permits local initiative in designing and adopting charters). In a charter system, city or county residents draw up their own blueprint of government and specify within it certain governmental powers and functions that the local units may exercise. This grant of additional powers is directly authorized by the local

\(^{12}\) Public hearing with the local government committee at Montana's Constitutional Convention, Mr. Dan Mizner, lobbyist for Montana League of Cities and Towns, January 25, 1972.

\(^{13}\) Public hearing with the local government committee, Mr. Oscar Anderson, delegate, January 27, 1972.


voters with the legislature approving or rejecting it in its finalized form. The voters are designing their own government with the legislature endorsing their decisions. The approval of the charter by the legislative branch of the state government formally recognizes the city or county as chartered.

The concept of charter-drafting gives municipalities freedom to organize a system of government that is consistent with their needs. The written charters cannot contradict the provisions concerning local government provided in the state constitution. Cities and counties are allowed to draw up a basic and specific framework that will allow them to function smoothly with the state structure. The concept of charter-drafting stimulates and renews vigor within individual communities as these communities are then able to provide solutions to their individual problems.

A charter system does not allow counties and cities to assume an isolationist attitude for, intergovernmental cooperation is essential if this system is adopted. The charter system, for example, requires a broad revenue base to support the powers granted to it. This creates a problem in Montana because of the many small communities which do not have the economic resources available to utilize the powers granted by the charter system. Cooperation between these individually chartered communities could create a desired system of efficiency. A sharing of functions and duties would be beneficial to individual communities as well as neighboring counties.
The classification of municipalities according to population is another alternative for providing greater flexibility for local government units. The present system of classification, which is based on population, is used sparingly in Montana. This system states that a first-class city has a population of 10,000 or more while a second-class city has a population ranging from 7,500 to 10,000. The population scale continues until the range in population is 300 to 1,000. Areas with this population are called towns. Areas with less than 300 cannot incorporate.

The basic concept of a classification system seems to be misused in Montana. Ideally, it could provide local autonomy without interfering with the provisions established by the constitution or legislature. It is presently utilized in the capacity of determining the need for parking meters, based on population, and for the distribution of license fees. Counties and cities of different population, tax basis, and geographical bases have different problems. Classification based on the perspectives could be used to solve the problems of what types of local government units should be given what powers. Thus, considerable self-government powers could be given to certain units of government through classification while others receive moderate powers and the remaining units

[16] Ibid., p. 102.
[17] Ibid.
receive no self-government. The concept of classification could be sketched in the constitution with actual guidelines to be drawn up in the legislature.

The Model State Constitution suggests that, when referring to classification, a state constitution should state that "the legislature shall provide for classification of civil divisions on the basis of population or any other reasonable basis." The legislature must provide flexible, yet specific, provisions for classification. The cities, in turn, could use the grant of power received through classification in the formation of their own charter. They would be given guidelines but they would draw the particular provisions that deal specifically with their own community.

The doctrine of residual power incorporates the concepts of chartering, intergovernmental cooperation, and classification within the structure of the local government unit. Thus, the units have the freedom to adopt their city's charter and the authority to govern themselves within the limits established by the constitution and statutory law. The theory indirectly promotes intergovernmental cooperation by urging locales to function independently of the state government. Individual localities turn to their neighbors, rather than the state legislature because of the need to survive. Independence, authority, and smoothness at the local level and state level of government results because of constitutional powers.


The growing importance of local government in Montana is a reality. The theory of residual power seems to adequately satisfy the needs of the community while allowing the legislature the control it is entitled to. It is permissive, yet allows initiative on the part of the people. It would free the legislators to tasks of greater importance. The residual power theory seems to adequately satisfy the needs of all levels of state and local government.
Chapter IV. The Future of Local Government Units in Montana
As the previous chapters have indicated, it is historically evident that the development of local government in cities, towns, and counties has been hindered during the 92 years of Montana's statehood. Although cities and towns have grown substantially in size since 1889 (Chapter 2, Appendix I), their capacity to govern their own affairs has remained stagnant. My study has indicated that this inertness has been the result of the silence of the Montana Constitution concerning municipalities. It is clear that the present document does not meet the growing needs of these local government units.

The framers of the 1889 Constitution were engulfed in the western tradition of America complete with Indians, cattle drives, and wild mining towns. The concept of cities and municipalities had not reached the western plains of the nation. One possible theory concerning the vague mention of local government in the constitution revolved around the influence that the individual delegate's professions had on their deliberations. Through research it is evident to me that professions had little effect on individual delegate's decisions. Although each person was naturally affected by his profession, this writer believes that the delegates used wise judgement, rather than undue prejudice in drawing up the Constitution.

The lack of interest in local government seems to originate from the premise that the delegates were unable to project into the future and see the world of 1972. Although America had seen
a great deal of change in the latter decades of the 1800's, it was small compared to the evolutionary progress that has engulfed the United States since the Montana Constitution was drafted. It was very difficult for men in 1889 to consider the possibility that great municipalities, rapid communications, and ready transportation would unite this large state. The 1889 delegates saw no reason to be explicit in their framework for local government. In all probability they anticipated that Montana would remain a center for mining and agriculture trade without any thought of Montana becoming involved in other fields. This lack of foresight is unfortunate but understandable.

The present constitution denies local government control of their own affairs. Restrictions imposed on municipalities by statutory law (contained in the Revised Codes of Montana) leave little governing power to local government. Rather, the legislature has the power to determine local policy. It is amazing to review the minutes and the proceedings of city councils that are concerned with the governing of local units and see little change in recorded documents of 1897, 1931, or 1972. It becomes evident to this writer that the authority of local government has progressed very little since 1889.

A new constitutional article concerning local government is essential. But in writing this article the mistakes of the past and the possibilities of the future must be taken into consideration. The framers of the article must reflect on the limitations imposed by law on local government which have resulted
in inadequate laws governing specific locales. The problems that the legislature encounters in handling decisions concerning local government must be kept in mind. Yet, the new article must respect the fact that the legislature is the sovereign ruling body of the state.

In writing a new article for local government, a great deal of thought must be given to the future of Montana. Presently, Montana is considered a rural state. But will this situation change in ten, twenty, thirty years? What are the possibilities of Montana becoming an urban state? What future developments in communication, government, and industry will affect Montana and her local units of government? These questions are difficult to answer. Yet they must be kept in mind when rewriting the local government article.

In viewing Article XVI of the Montana Constitution, Counties-Municipal Corporations and Offices, it is amazing to realize that this inadequate constitutional article has been used since 1889. It is clear that it does not meet the growing demands of the municipalities. I agree with the 1970 report of the Montana Legislative Council which stated that five of the eight sections of this article which concern the structure of county government, including election of officials, in statutory and should not be included in the constitution.¹ The constitution

¹ Lucile Speer, Municipal Hopes Ride on Con Con (Great Falls Tribune, November 11, 1971), p. 29.
should contain only fundamental law (although it is difficult to
determine the fundamental framework of local government autonomy).

The Montana Legislative Council further stated in its
proposal that only two sections of Article XVI should be retained:
"The section granting broad powers to the legislature to provide
alternative forms to local government and the one placing restric-
tions on legislative power to alter county seats." I believe
that additional provisions must be added to establish and insure
local government autonomy. The article that is written must
allow counties and cities maximum individual freedom. An ex-
plicit declaration of purpose must be stated in the article.
A statement of fact is essential in settling the tone and guide-
lines for the article. The article must not leave any doubts,
for it should be firmly stated.

The local government article must define what units are
included in its sphere of control. Presently local government
units extend from school districts to mosquito control regions.
The article must state that any city, county, town, or consoli-
dated area is within the realm of local government. Any other
unit should be exempt from the privileges that are given to these
local government units. It is important to define the basic units
of local government, yet flexibility must be allowed to any new
government units that may emerge in the future.

---

2 Lucile Speer, We, the People... (Bozeman, Montana: Coopera-
3Delegate proposal 56, Marian Erdmann, Sec. 2.
The most important units of local government are cities. The city is more than a creature of the state. This unit of government is created at the request and consent of the residents of an area and is subject to their needs. Although the city is an administrative agent of the state and performs, in its name certain basic government functions, it is, in reality, a creature of the people.

Constitutional trends in the future indicate autonomy for individual metropolitan counties, thus creating multi-county metropolitan councils. The combination of sparse population and great amounts of land does not seem to justify this action in Montana. The structure that is presently in use, consisting of the cities and counties, would seem to be an adequate framework. The inclusion of counties as well as cities is essential to achieve local autonomy. Issues which do arise, dealing with county affairs, should be resolved by the county or city in question, rather than the legislature.

The National Municipal League, in their proposed Model State Constitution, advocate home-rule "so that the local government can pass laws and ordinances relating to local affairs, property, and government with specific emphasis on certain powers."

---

This model constitution aims for a self-executing system with exact boundaries to be defined by judicial review. A newer approach, advanced by the American Municipal Association's *Model Constitution*, declares that, although home-rule charters with a broad range of powers should be made available to a city, no home-rule power is beyond legislative control. This approach, which deviates from the traditional home-rule approach eliminates judicial interpretation, which at times restricts the powers of local government.

I agree with the statement of Mr. Dan Mizner, of the Montana League of Cities and Towns, concerning the legislature's role. Various states advocate that municipalities have the power given to them by the constitution and the legislature. Mr. Mizner contends that the local government has any power that is not denied by the legislative. It seems reasonable that this negative position, called "residual power", could help to eliminate the problem. Residual power is a self-executing concept involving various units of local government. If this ideal is adopted in Montana the basic question concerning the desirability and foundations of government could be met.

Residual power should be granted to local government units. Cities, towns, and counties can thus perform anything that is not expressly denied them by their charter, the legislative assembly, or the Constitution. This would allow these units of

---

government the possibility to perform any function within their realm of governance that is not denied them. The Dillon Rule, that is presently in existence in Montana and which has inhibited local government in the past, would be extinguished. Local government would be allowed a great deal of elasticity, while promoting self-governance and autonomy.

The article should sketch the basic provisions for local government units. These could be supplemented by governmental law drawn up by the legislature. A section should provide provisions to allow a county or city to draw up or abandon a charter that conforms to the general law (charter requirements will be drawn up by the legislature). The only stipulation required of the local units is that a majority of the voters of the area must approve of the charter before it comes into reality. Local government units should be allowed to be classified according to the provisions established by the legislature. This does not limit it only to population but also can be classified according to geography, economics, etc. Counties, cities, and towns should have the option to consolidate if they deem it necessary. Again, they must follow the guidelines established by general law and must have the affirmative vote of the majority of voters of the area. Local government units must be allowed the privil-

---

Delegate proposal 40, James Felt, Sec. 3, Subsection 1.

Delegate proposal 97, Thomas Ash, Sec. 4.
ege of establishing any form of government that they feel will be most beneficial to their locales. This type of government chosen must be approved by general law and the voters of the area. This particular section would allow for future development in Montana which cannot be foreseen at the present time. The flexibility of this section will allow freedom for any unit of local government in the state.

The Constitution of the State of Montana should explicitly state that responsible local government should be in the hands of the people. This would place the decision-making power of local governments in the hands of individuals who are aware of the problems and who are directly responsible to the people. The article should include a conclusive, yet restrictive description of the limitations imposed on local government. This could be stated by advocating that local government has any power and can perform any function that is not denied by its charter nor is limited by the legislative.

A very important segment of local government autonomy is concerned with intergovernmental cooperation. A section should deal not only with cooperation within the state, but should allow cooperation with neighboring states. This would allow a great deal of flexibility, especially concerning financial intergovernmental cooperation. The Constitutional Convention delegates, before promoting local autonomy within the limits of

---

9 Majority report of Local Government Committee, Section 5.
any area, must deliberate on the problem of effective cooperation among all units of government. The provisions adopted must promote cooperation among units of government at all levels. Problems exist at the present time between different areas of government. A clash is prevalent between city and county restrictions, thus inhibiting a coalition of the two entities. With a broad grant of power the smaller communities in Montana could group together to perform basic functions.

The necessity of interaction between the federal, state, county, and city governments is desperately needed. The conflicts between these four have resulted in a multiplicity of problems. The question arises as to what obligation each unit of government has. Presently each level is reluctant for each seems to be afraid that it will contribute more than the others. Trust and cooperation is not evident.

The provisions for local government should include the provisions for the fundamental structure entrusted to this local branch of government. Ideally this section should extend to the skeleton structure of the cooperation that is essential between the various levels of government. This can be later supplemented by statutory law. The structuring of the anatomy of local government should include a general statement about officials rather than the elaborated version that is presently included in

Delegate proposal 40, proposed by James Felt, Section 5.
the Montana Constitution. The basic structure can be expounded
upon by later legislative provisions, but the strength and power
of local government would be included in the basic document.

With the preceding details in mind, this writer has drawn
up the following article for local government in the state of
Montana:

Article -----

Sec. 1. Purpose: The purpose of this article is to encourage
maximum local self-government and intergovernmental cooperation.

Sec. 2. Units of local government:
A unit of local government may include counties,
cities, towns, or other civil divisions or
any of these units functioning within a con-
solidated organization.

Sec. 3. Organization of local government:
The legislature shall provide, by general
law for the government of counties, cities,
towns and other civil divisions including provisions:

(a). to enable a county or city to adopt or abandon a
charter by a majority vote of the qualified voters
voting;

(b). to allow units of local government to be classified
on the basis of population or any other basis related
to the purpose of classification;

(c). to allow counties, cities, and towns the option of
consolidated municipal government to be adopted by
the majority vote of the qualified voters;

(d). to allow a county or a city the option to adopt an
alternative form for municipal government to be adopted
by a majority vote of the qualified voters.
Sec. 4. Powers of units of local government:
A unit of local government may exercise any power or perform any function which is not specifically denied to it by this constitution, by its charter or its class of government and is within limitations as the legislative assembly may establish by law. This does not include the power to enact private or civil law, nor to administer the punishment incident to such law, nor the power to define and provide for the punishment of a felony.

Sec. 5. Intergovernmental cooperation:
Subject to statutory limitations, one or more units of local government may exercise their powers or perform their function with any one or more units of local government within this state or units of local government or other states. These units may participate in the financing jointly and in cooperation with any other units of local government.

In addition to these provisions, I would suggest that a scheduled date of four years would be established by the legislature to allow counties, cities, and towns to properly utilize the provisions that are given them. This will allow a transition period for local government to step into the new realm that is open to them.

The basic philosophy, adopted in this writer's proposed constitution, has been accepted by the local government Committee of Montana's Constitutional Convention and can be seen in their majority proposal (refer to Appendix V). The two articles presented in this thesis (this writer's proposal and the local government committee's proposal) have strong and weak points. Section 2 of this writer's article gives maximum freedom to local
government units in determining their particular geographical division of government. This gives local units the autonomy that is needed. The majority report leaves this power to legislative discretion (Section 1). This statutory provision seems to weaken the basic premise of local government autonomy.

This writer has not listed county or city officials in the proposed article. This, too, seems to be a statutory provision, for these officials are listed in the Revised Codes of Montana. The majority report does list officers (Section 3) because the members of the committee felt that it would be politically expedient to do so. It is the opinion of this writer that including county and city officers in the Constitution weakens the article because it is statutory law.

Section 3, subsections (a), (b), (c), (d) of my proposed article is similar to sections 3 and 4 of the majority proposal. These sections allow for maximum local government autonomy in determining forms of government. Yet the control that these articles grant the legislature over these units of government could result in little autonomy in reality. These sections seem to indicate a contradiction by listing options that local units have and yet inserting the phrase that the legislature has the power to change anything that is decided.

Both articles presented in this thesis promote the theory of residual power. Flexibility and autonomy are expressed in section 4 of this writer's article and section 6 of the majority
proposal. These sections present the core of both local government articles for they allow local units any power not specifically denied to them. This writer believes that this theory can help insure autonomy for local government units in Montana.

Intergovernmental cooperation is hindered in both articles because of the clause "subject to statutory limitations." This may weaken the section although this writer believes that legislative regulation is needed to insure a uniform, rather than a random system of governmental cooperation.

The majority proposal mentions revenue sharing (section 8), initiative and referendum (section 9), and recall (section 10). This writer does not believe that these sections should be included in constitutional provisions concerning local government. Initiative, referendum, and recall methods are mentioned elsewhere in the constitution. Referring to it again seems repetitious and unneeded. Revenue sharing seems to be a statutory provision, although it does compliment the provisions established for intergovernmental cooperation.

Section II of the local government committee's proposal deals with voter review of local government units. This writer feels that the basic concept of review is excellent but the proposed section is weakened because of statutory time provisions. The legislature should determine the time stipulation in review clauses rather than making it a constitutional provision.

The local government article of Montana's Constitution is
being rewritten with thoughts of the past and hopes of the future in mind. Although weak points have emerged in the process, the final majority proposal (which compliments this writer's article) has emerged as a strong article which promotes flexibility and autonomy for local government units. Each of the articles presented in this thesis provides a basic framework to solve problems of today and of the future.

The work that has been done concerning local government has not ended. It is merely the beginning. With this basic framework provided by these articles, local governing bodies of the state will be prepared to meet the challenges and responsibilities of the next 82 years of statehood in Montana.
APPENDIX
APPENDIX I

Economic and Business Categories of the 1889 Constitutional Convention Delegates

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farming and ranching solely</td>
<td>3</td>
</tr>
<tr>
<td>Farming and ranching with mining</td>
<td>3</td>
</tr>
<tr>
<td>Farming and ranching with commercial</td>
<td>5</td>
</tr>
<tr>
<td>Lawyer solely</td>
<td>12</td>
</tr>
<tr>
<td>Lawyer, interests other than mining</td>
<td>2</td>
</tr>
<tr>
<td>Lawyer, with mining</td>
<td>7</td>
</tr>
<tr>
<td>Physician</td>
<td>1</td>
</tr>
<tr>
<td>School teacher</td>
<td>2</td>
</tr>
<tr>
<td>Merchant, solely</td>
<td>4</td>
</tr>
<tr>
<td>Merchant, with other interests</td>
<td>5</td>
</tr>
<tr>
<td>Banking, with other interests</td>
<td>3</td>
</tr>
<tr>
<td>Commercial</td>
<td>6</td>
</tr>
<tr>
<td>Mining, small or employee</td>
<td>7</td>
</tr>
<tr>
<td>Mining with other interests</td>
<td>6</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>3</td>
</tr>
</tbody>
</table>
APPENDIX II

Counties—
Municipal Corporations
and Offices

Article XVI

Sec. 1 the several counties of the territory of Montana, as they shall exist at the time of the admission of the state into the Union, are hereby declared to be the counties of the state until otherwise established or changed by law.

Sec. 2 the legislative assembly shall have no power to remove the county seat of any county, but the same shall be provided for by general law; and no county seat shall be removed unless a majority of the qualified electors of the county, at a general election, on a proposition to remove the county seat, shall vote therefor; but no such proposition shall be submitted oftener than once in four years.

Sec. 3 in all cases of the establishment of a new county it shall be held to pay its ratable proportion of all then existing liabilities of the county or counties from which it is formed less the ratable proportion of the value of the county buildings and property of the county or counties from which it is formed; provided, that nothing in this section shall prevent the re-adjustment of county lines between existing counties.

Sec. 4 in each county there shall be elected three county commissioners, whose term of office shall be six years; provided that each county in the state of Montana shall be divided into three commissioner districts, to be designated as commissioner districts, numbers one, two and three, respectively.

The board of county commissioners shall in every county in the state of Montana, at their regular session, on the first Monday in May, 1929, or as soon thereafter as convenient or possible, not exceeding sixty days thereafter, meet and by and under the direction of the district court judge or judges of said county, divide their respective counties into three commissioner districts as compact and equal in population and area as possible, and number them respectively, one, two and three, and when such division has been made, there shall be filed in the office of the county clerk and recorder of such a county, a certificate designating the metes and bounds of the boundary lines and limits
of each said commissioners districts, which certificate shall be signed by said judge or judges; provided, also that at the first regular session of any newly organized and created county, the said board of county commissioners, by and under the direction of the district court judge or judges of said county, shall divide such new county into commissioner districts as herein provided.

Upon such division, the board of county commissioners shall assign its members to such districts in the following manner; each member of the said board then in service shall be assigned to the district in which he is residing of the nearest thereto; the senior member of the board in service to be assigned to the commissioner district No. 1, the next member in seniority to be assigned to commissioner district No. 2, and the junior member of the board to be assigned to commissioner district No. 3; provided, that at the first general election of any newly created and organized county, the commissioner for district No. 1, shall be elected for two years, for No. 2, for four years, and for No. 3, for six years, and biennially thereafter there shall be one commissioner elected to take place of the retiring commissioner, who shall hold his office for six years.

That board of county commissioners by and under the direction of the district court judge or judges of said county, for the purpose of equalizing in population and area such commissioner districts, may change the boundaries of any or all of the commissioner districts in their respective county, by filing in the office of the county clerk and recorder of such county, a certificate signed by said judge or judges designating by metes and bounds the boundary lines of each of said commissioner districts as changed; and such change in any or all the districts in such county, shall become effective from and after filing of such certificate; provided, however, that the boundaries of no commissioner district shall at any time be changed in such a manner as to affect the term of office of any county commissioner who has been elected, and whose term of office has not expired; and, provided further, that no change in the boundaries of any commissioner district shall be made within six months next preceding a general election.

At the general election to be held in 1930, and thereafter at each general election, the member or members of the board to be elected, shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate for the county, provided, however, that no one shall be elected
as a member of said board, who has not resided in said district for at least two years next preceding the time when he shall become a candidate for said office.

When a vacancy occurs in the board of county commissioners the judge or judges of the judicial district in which the vacancy occurs, shall appoint someone residing in such commissioner district where the vacancy occurs, to fill the office until the next general election occurs when a commissioner shall be elected to be elected to fill the unexpired term.

Sec. 5

there shall be elected in each county the following county officers who shall possess the qualifications for suffrage prescribed by section 2 of article IX of this constitution and such other qualifications as may be prescribed by law:

One county clerk who shall be clerk of the board of county commissioners and ex-officio collector; one sheriff; one treasurer, who shall be collector of the taxes, provided, that the county treasurer, shall not be eligible to his office for the succeeding term; one county superintendent of schools; one county surveyor; one assessor; one coroner; one public administrator. Persons elected to the different offices named in this section shall hold their respective offices for the term of four (4) years, and until their successors are elected and qualified. Vacancies in all county, township and precinct offices, except that of county commissioners, shall be filled by appointment by the board of county commissioners, and the appointee shall hold his office until the next general election; provided, however, that the board of county commissioners of any county may, in its discretion, consolidate any two or more of the within named offices and combine the powers and the duties of the said offices consolidated; however, the provisions hereof shall not be construed as allowing one (1) office incumbent to be entitled to the salaries and emoluments of two (2) or more offices; provided, further, that in consolidating county offices, the board of county commissioners shall, six (6) months prior to the general election held for the purpose of electing the aforesaid offices, make and enter an order, combining any two (2) or more of the within named offices, and shall cause the said order to be published in a newspaper, published and circulated generally in said county, for a period of six (6) weeks next following the date of entry of said order.

Sec. 6

the legislative assembly may provide for the election or appointment of such other county, township, precinct and municipal officers as public convenience may require and their
terms of office shall be as prescribed by law, not in any case to exceed two years, except as in this constitution otherwise provided.

Sec. 6 The legislative assembly may, by general or special law, provide any plan, kind, manner or form of municipal government for counties, or counties and cities and towns, or cities and towns, and whenever deemed necessary or advisable, may abolish city or town government and unite, consolidate or merge cities and towns and county under one municipal government, and any limitations in this constitution notwithstanding, may designate the name, fix and prescribe the number, designation, terms, qualifications, method of appointment, election or removal of the officers thereof, define their duties and fix penalties for the violation thereof, and fix and define boundaries of the territory so governed, and may provide for the discontinuance of such form of government when deemed advisable; provided, however, that no form of government permitted in this section shall be adopted or discontinued after it is submitted to the qualified electors in the territory affected and by them approved.

Sec. 8 Any county or counties in existence on the first day of January, 1935, under the laws of the state of Montana or which may thereafter be created or established thereunder shall not be abandoned, abolished and/or consolidated either in whole or in part or at all with any other county or counties except by a majority vote of the duly qualified electors in each county proposed to be abandoned, abolished and/or consolidated with any other county or counties expressed at a general or special election held under the laws of said state.
APPENDIX III

Articles Contained in the
Constitution of the State of Montana
that Apply to Local Government

Article V

Sec. 26 local and special legislation

Sec. 36 restrictions concerning any commission or association's interference with municipal improvement, money, property, and functions.

Sec. 39 obligations and liabilities of municipal corporations cannot be exchanged, transferred, remitted, or postponed.

Article VIII

Sec. 1 inferior courts in incorporated cities and towns.

Sec. 19 four-year term for county attorneys.

Sec. 24 legislative creation of police and municipal courts and magistrates for cities and towns.

Sec. 33 residence of judicial officers in the city or town for which they had been elected during their term of office.

Article IX

Sec. 2 requires that a period of residence in a town, county, or precinct, as prescribed by law, must be met before a person can vote.

Sec. 11 legislative assembly shall determine the qualifications required to run for city offices.

Article XI

Sec. 8 counties and cities cannot contribute public funds to aid in the support of any schools or institutions controlled in whole or part by any church.

Article XII

Sec. 2 the property of cities and towns is exempt from taxation.
Sec. 4 legislative assembly cannot levy taxes on cities and counties for county and city purposes but can grant corporate authorities powers to assess and collect taxes for such purposes.

Sec. 5 the assessed value of property taxed for city and town purposes cannot exceed the value of the same property for state and county purposes.

Sec. 6 inhabitants of cities and counties must pay state taxes.

Sec. 7 all corporations are subject to taxation for state, county, and municipal purposes.

Sec. 15 the board of county commissioners shall constitute the county board of equalization.

Sec. 16 assessment of railroads in counties and cities.

Article XIII

Sec. 1 cities and counties cannot make loans or donations to individuals, associations, or corporation.

Sec. 3 any money borrowed by a city or county shall be used only for the purpose specified.

Sec. 4 the state will not assume the debt of a city or county.

Sec. 5 limitations of county indebtedness.

Sec. 6 limitations of city indebtedness.

Article XV

Sec. 12 the needed consent of local authorities to build railroads within a city.

Sec. 13 restrictions on the legislative assembly concerning benefits to railroads and other corporations because of county and city transactions or considerations already passed.

Article XVI

All sections

Article XVII

Sec. 1 restrictions concerning disposing of public lands within any city.
Article XIX

Sec. 6 the offices of county officers are at the county seats of their respective counties.
APPENDIX IV

<table>
<thead>
<tr>
<th>Year</th>
<th>Rural Population 1889</th>
<th>Rural Population 1970</th>
</tr>
</thead>
<tbody>
<tr>
<td>1889</td>
<td>65%</td>
<td>40%</td>
</tr>
<tr>
<td></td>
<td>35%</td>
<td>60%</td>
</tr>
</tbody>
</table>

Population of Various Cities & Towns

<table>
<thead>
<tr>
<th>Year</th>
<th>City</th>
<th>Population 1889</th>
<th>Population 1970</th>
</tr>
</thead>
<tbody>
<tr>
<td>1889</td>
<td>Helena</td>
<td>13,834</td>
<td>22,730</td>
</tr>
<tr>
<td></td>
<td>Billings</td>
<td>836</td>
<td>60,549</td>
</tr>
<tr>
<td></td>
<td>Great Falls</td>
<td>3,979</td>
<td>53,761</td>
</tr>
<tr>
<td></td>
<td>Missoula</td>
<td>956</td>
<td>29,232</td>
</tr>
<tr>
<td></td>
<td>Bozeman</td>
<td>10,732</td>
<td>23,358</td>
</tr>
<tr>
<td></td>
<td>Butte</td>
<td>2,143</td>
<td>13,670</td>
</tr>
<tr>
<td></td>
<td>Havre</td>
<td>2,382</td>
<td>10,558</td>
</tr>
<tr>
<td></td>
<td>Kalispell</td>
<td>956</td>
<td>10,526</td>
</tr>
<tr>
<td></td>
<td>Miles City</td>
<td>1,435</td>
<td>9,023</td>
</tr>
<tr>
<td></td>
<td>Glendive</td>
<td>3,975</td>
<td>6,365</td>
</tr>
<tr>
<td></td>
<td>Anaconda</td>
<td>1,012</td>
<td>9,771</td>
</tr>
<tr>
<td></td>
<td>Dillon</td>
<td>2,526</td>
<td>4,548</td>
</tr>
<tr>
<td></td>
<td>Livingston</td>
<td>956</td>
<td>6,883</td>
</tr>
<tr>
<td></td>
<td>Lewistown</td>
<td>1,826</td>
<td>6,437</td>
</tr>
</tbody>
</table>
APPENDIX V

ARTICLE _______

LOCAL GOVERNMENT

Section 1. DEFINITION. The term "local government units" includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

Section 2. COUNTIES. The counties of the state of Montana as they exist at the adoption of this constitution are the counties of the state. County boundaries shall not be changed or county seats transferred until approved by a majority of those voting on the question in each county affected.

Section 3. FORMS OF GOVERNMENT. The legislature shall provide by law for the government of local government units and for procedures of incorporating, classifying, merging, consolidating, and dissolving such units and of altering optional or alternative forms of government for each unit or combination of units to enable a unit or combination of units to adopt, amend or abandon an optional or alternative form by a majority of those voting on the question.

One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of
schools, an assessor, a coroner, and a public administrator whose terms, qualification, duties and compensation shall be prescribed by law. The Board of County Commissioners may consolidate two or more offices. The Boards of Commissioners of two or more counties may provide for a joint office and for the election of one official to perform the duties of that office in the respective counties.

Section 4. GENERAL POWERS. Local government units not exercising self-government powers under Sections 5 and 6 shall have the following general powers:

(1) Incorporated cities and towns shall have the powers of a municipal corporation and such legislative, administrative, and other powers as provided or implied by law.

(2) Counties shall have such legislative, administrative and other powers as provided or implied by law.

(3) The powers of incorporated cities and towns and counties shall be liberally construed.

(4) Other local government units shall have such powers as provided by law.

Section 5. SELF GOVERNMENT CHARTERS. The legislature shall prescribe procedures and may set limits under which a local government unit or combination of units may frame, adopt, amend, revise or abandon a self government charter with the approval of a majority of those voting on the question. The prescribed procedures, however, shall not require approval
of a charter by a legislative body.

Charter provisions with respect to a local government unit's executive, legislative and administrative structure and organization shall be superior to statutory provisions.

Section 6. SELF GOVERNMENT POWERS. Local government units adopting self government charters may exercise all powers not prohibited by this constitution, by law or by charter.

This grant of self government powers may be extended to other local government units through optional forms of government provided for in Section 3.

Section 7. INTERGOVERNMENTAL COOPERATION. A local government unit by act of its governing body may, or, upon being required by initiative or referendum, shall cooperate, consolidate or agree in the exercise of any function, power or responsibility with, or share the service of an officer, or transfer or delegate any function, power or responsibility or duties of an officer to one or more other local government units, school districts, the state or the United States, unless prohibited by law or charter.

Section 8. REVENUE SHARING. Nothing in this constitution shall prohibit the state from sharing revenue with local government units or the units from participating in revenue sharing with the state or the United States.

Section 9. INITIATIVE AND REFERENDUM. The initiative and referendum powers reserved to the people by the constitution
shall be extended by law to the qualified voters of each local government unit.

Section 10. RECALL. All elected public officials of local government units are subject to recall by the voters of the unit from which elected. Procedures for recall shall be prescribed by law.

Section 11. VOTER REVIEW OF LOCAL GOVERNMENT. The legislature shall within four years of the adoption of this constitution provide for procedures by which each local government unit either separately or jointly shall review the government structure of the local unit or joint unit and shall submit one alternative form of government to the voters at the next general or special election. The legislature shall provide for a review procedure each ten years after the first election.
BIBLIOGRAPHY

Public Documents

Archives of the Montana Historical Society

Constitution of the State of Montana


Other Sources

Personal interview with Virginia Blend, delegate and city council member in Great Falls, Montana. January 27, 1972.


General Works


**Articles and Periodicals**


**Newspapers**

Great Falls Tribune. September, 1971 - March, 1972

