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Montana Legislative Summary, 1957

This article is intended to give a summary view of the principal accomplishments of the 1957 session of the Montana Legislative Assembly. The sections that follow have been prepared by the faculty of the Law School at Montana State University, based upon bills selected by the staff of the Law Review. Space does not permit summarizing all of the enactments, but those believed by the Law Review staff to be the most significant have been included.

**Adoption**

House Bill 167 enacts the "Uniform Adoption Act," repealing sections 61-127 to 61-137, and 61-140, Revised Codes of Montana, 1947, to that end. The sections repealed had been amended from time to time to implement the state’s interest, expressed through its various child welfare agencies, so that the law repealed was not seriously archaic. It also already contained the provision in the Uniform Act that the petition to adopt should be filed in the district court of the prospective parent’s residence, which is generally thought to be an improvement over majority practice, allowing it also at the child’s domicil.

The Uniform Act provides some improvement, both in form and substance, which space does not permit detailing. However, the one section which would have made the most marked improvement in existing law was cut out of the Act as finally passed. Section 16 of the Uniform Act would have permitted an "annulment" of the adoption order within a two year period if the child should develop "any serious and permanent physical or mental malady or incapacity" resulting from pre-adoption conditions. It is submitted that this is a highly desirable provision. There is no possible justification for making the adoptive parents the butt of such tragedy—often literally ruining the lives of the adoptive parents without corresponding benefits either to the child or the public. Society itself should continue to assume responsibility for such children as public charges. Probably section 17 of the Uniform Act authorizing the adoption of adults, also omitted, likewise would have been an improvement over section 61-139, dealing with the same subject, which was left unchanged.

Section 61-130, as amended in 1955, set forth eight exceptions to the general rule that the consent of the adopted child’s parents is required. As there drafted, it was clear that these eight situations applied equally to the parents of a legitimate child and the mother of an illegitimate child. In enacting the Uniform Adoption Act our legislature has amended section 5 thereof, so as expressly to incorporate these eight "exceptions"; however, in doing so, it is no longer clear that they apply both to the parents of a legitimate child and to the mother of an illegitimate child. In terms they

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1 All section numbers in the text refer to the Revised Codes of Montana, 1947, unless noted otherwise.
expressly limit the general requirement of consent only as to the former. It is not clear whether this expresses the actual legislative intent.

Section 14 of the Act is so worded as to make it appear that an appeal from the original court decree in such proceeding is to the district court: "An appeal may be taken from any final order . . . to the district court by any person aggrieved thereby." With section 4 expressly placing the original venue in the district court at the petitioner's residence, this error is not serious, though without section 4's clear language it would be most confusing. Obviously the word "to" must be read as "from," to avoid a senseless construction.

Civil Procedure

House Bill 204, authorizing the Supreme Court of Montana to formulate rules of procedure in civil actions, failed of enactment, apparently disposing for the time being of efforts to secure rules patterned after the Federal Rules of Civil Procedure.

The manner of selecting jurors in district courts received attention in House Bill 180, requiring persons appearing on the list of those qualified to serve as trial jurors to be assigned numbers and be drawn by the numbers so assigned.

Criminal Law and Administration

Arrest Bonds

Senate Bill 51 authorizes the issuing of "guarantee arrest bond certificates," not to exceed $100 in amount, by automobile clubs or associations, and qualifying insurance or surety companies. The act also provides that such "bond" shall be accepted by any court in the state, including municipal courts, in lieu of cash bail. "Guaranteed arrest bond certificate" is defined as any certificate in which one of the above companies guarantees the appearance of the person whose signature appears on the certificate, assuming responsibility for paying the same upon failure of the principal to pay. The Commissioner of insurance has the duty of certifying to each justice of the peace, police magistrate and district court judge the names of those associations and companies "who have become sureties with respect to guaranteed arrest bond certificates." A principal purpose of the act is to assist motorists by providing a ready "medium of exchange" for posting bond with a minimum of inconvenience.

Burglary

House Bill 8 changes the definition of burglary. In 1949 the statutory definition was enlarged to include entering an "automobile." This present act changes that word to "motor vehicle" and adds "aircraft." Courts do and should generally continue to interpret criminal statutes narrowly. Hence "automobile" may well permit a narrower construction of the burglary definition than intended by the legislature. And, of course, there is quite as much reason for protecting "aircraft" from a burglarious entry as other kinds of conveyances.

Liquor

House Bill 456 sets up a procedure for issuing authenticated I.D. (identification) cards by the State Liquor Control Board, upon application to the County Clerk and Recorder and payment of a fifty cent fee.
Section 6 states that "it shall be unlawful for any person to issue a state liquor permit to any person under the age of 21 years." Section 7 makes it unlawful "to fraudulently misrepresent age to any dispenser or to falsely procure an identification card," or to alter any I.D. card. Section 8 provides a minimum-maximum penalty of "five hundred dollars ($500.00) or three months' confinement, or both." Section 9 grants concurrent jurisdiction to justice of the peace and district courts.

Chapter 107, Laws of Montana 1955, introduced an I.D. card into the statutory scheme of liquor dispensing. However, the card there authorized is very different in purpose from the present one. The 1955 act simply intended to provide the vendor with a means for protecting himself against the charge of selling to a minor, by requiring the Liquor Control Board to supply vendors with forms calling for certain information from a customer whose age was doubtful. The customer could be required to fill out the card, which, when filed by the vendor for later examination by enforcement officers, protected him from possible revocation of his license for selling to a minor. The present card is an authentication of the carrier's age, but he carries it with him continuously.

It is not clear what this card contributes to liquor regulation, beyond giving the vendor an authenticated instrument from which to derive the information called for by the card he files. Although the information called for by each is not identical, the "personal" I.D. card will tend to verify the "truthfulness" of the card filed. However, securing such cards is strictly optional; nor are any of the privileges of a vendee conditioned upon having one. The issuing of liquor permits is not conditioned upon the presentation of such authenticated card. Even so, one might expect a provision authorizing the issuer of "permits" to rely with safety on this card. Instead, section 6 seemingly charges the issuer with strict liability for issuing a permit to a minor, without any reference whatever to the I.D. card provided for in the Act. Hence, in making it "unlawful for any person to issue a state liquor permit to any person under the age of 21 years," section 6 introduces matter wholly extraneous to the bill's title, thus probably making that section unconstitutional. More anomalous yet, the Board itself is both the I.D. authenticating authority and the one who issues permits, generally by an agent.

Senate Bill 62 expressly provides that possession of liquor by any person under 21 is a misdemeanor.

Motor Vehicles

In a very recent case the Montana Supreme Court ruled that municipalities have no jurisdiction to enact ordinances regulating driving on the city streets while intoxicated, or under the influence of narcotics. In House Bill 92, the legislature changes the law, as established in that case, so as expressly to authorize cities to so regulate their city traffic. After stating that such use of highways is a misdemeanor, subject to certain penalties, it adds that municipalities may enact the same provisions as ordinances, and enforce them in the city courts. It makes the same express provisions for "reckless driving." It also amends section 32-2142 so as to authorize the revocation of licenses by the Montana highway patrol board for conviction.

City of Billings v. Herold, 296 P.2d 263 (Mont. 1956).
under an ordinance prohibiting driving while under the influence of liquor or a drug.

Although the act restores the particular power of regulating use of its streets to the municipalities, the general doubt raised by the Herold case remains as to just when municipalities may exercise concurrent jurisdiction with the state in the criminal field. This doubt is heightened by the suspicion arising from that case that the Supreme Court wishes to limit greatly such concurrent jurisdiction so as to prohibit a second prosecution, under any circumstances, for the same alleged criminal act.

Senate Bill 84 amends section 31-146 so as to authorize the supervisor of the highway patrol, "upon proper authority," as well as the Highway Patrol Board (which already has that authority), to revoke drivers' licenses upon final convictions for certain driving violations. It makes clear that the "power to revoke" may be delegated by the Board to the supervisor. It also amends the section expressly to prohibit driving while under the influence of a narcotic drug alone or in combination with liquor.

Senate Bill 122 amends section 32-2142 relating to drunken driving, primarily to establish statutory presumptions as to intoxication or non-intoxication, according to the quantity of alcohol in the blood by weight. Those presumptions generally approved by chemists and biologists, as experts, are here adopted: (1) 0.05 per cent or less—non-intoxication; (2) 0.05 per cent to 0.15 per cent—no presumption either way; (3) above 0.15 per cent—intoxication. This act does not consider at all when such blood tests are admissible. Other relevant evidence continues to be admissible. Some changes in the penalty and license revocation provisions also were made.

Sodomy

House Bill 159 raises the statutory age of "incapacity" to be an accomplice to the crime of sodomy from 14 to 16 years, amending chapter 68, section 1, Laws of 1951, which created the original exception presumably to avoid the requirement of corroboration of an accomplice's testimony under a charge for this crime. State v. Gaughner and State v. Keckonen dramatize the difficulty the state has labored under in the past in securing convictions on such charge.

Miscellaneous

House Bill 54 makes it a misdemeanor to deliver any "grain in bulk" containing "toxic chemicals," to any public warehouse with "criminal intent" (actual knowledge) or lack of "reasonable diligence.

House Bill 43 adds "state fish and game wardens" to the class of persons with express authority to enforce the requirement that life saving equipment sufficient for all passengers be provided in all boats being operated within Montana's jurisdiction.

House Bill 345 makes it a misdemeanor to "willfully" operate, interfere or tamper with or put into operation the engine of another person's aircraft, without his consent.

305 P.2d 338 (Mont. 1957).
107 Mont. 253, 84 P.2d 341 (1938).
House Bill 335 makes it a misdemeanor to carry on one’s person, or in a motor vehicle, or to own, possess, store, give away or sell a ‘switch blade’ knife, and provides a maximum punishment of $500 and/or 6 months imprisonment. The act excepts “bona fide collectors” of knives from its operation. It defines such knife as one having a blade 1½ inches or longer, which opens automatically by hand pressure applied to the handle.

House Bill 458 amends section 53-121, generally prohibiting Montana residents from operating cars locally on foreign automobile licenses, but permitting it “when such vehicle is a part of an interstate fleet registered in accordance with the provisions of section 53-114,” by deleting and eliminating the above quoted exception.

Electric and Telephone Cooperatives

House Bill 121 includes within the Rural Electric Cooperative Act provisions for rural telephone cooperatives. Numerous detailed changes are made in chapter 5 of title 14 in order to accommodate this additional purpose of cooperatives: acquiring and operating telephone facilities. For the purposes of telephone co-ops an area is not rural if it is within a town (incorporated or not) of more than 1,500 persons. For electric co-ops the figure remains at 3,500 persons.

Fertilizer Sale and Distribution

The “Montana Fertilizer Law of 1957” (Senate Bill 68), to be administered by the Commissioner of Agriculture, provides for the registration of brands and grades of commercial fertilizers offered for sale, sold or distributed; and for the payment of annual fees of $35 per ton and $10 per grade, in addition to an inspection fee of 15 cents per ton. The fees constitute a fund for the payment of costs of inspection, sampling, analysis and administration of the act. Labeling of containers showing net weight, brand and grade, guaranteed analysis, and the name and address of the registrant is required. Minimum plant food content is prescribed, and misbranding and false or misleading statements and advertising is made unlawful. The Commissioner is authorized to prescribe rules and regulations after public hearing, and he may cancel registrations and issue “stop sale” orders. On complaint or application of the Commissioner, a court may order seizures and enjoin violations. Also, violations of the act or rules and regulations of the Commissioner are subject to prosecution on certificate of violation by the Commissioner. The penalty for violations is not prescribed other than by a provision that violations “shall be punished in the discretion of the court”; and injunctions may be issued without bond and “notwithstanding the existence of other remedies at law.”

Gifts

Montana is among the first to enact the “Uniform Gifts to Minors Act” (House Bill 344) approved by the National Conference of Commissioners on Uniform State Laws in August, 1956. The Uniform Act is, however, merely an improved version of a “Model Act” adopted by thirteen states and the District of Columbia in 1955 and 1956. Both acts are intended to simplify the making of gifts of securities to minors, an area of law fraught with difficulties in getting the legal and the practical to coincide.
Without the statute, gifts to minors may be made to the minor himself, to a guardian, or in trust, each of which methods has its disadvantages. The minor himself may well be incompetent to handle securities wisely; and the subject matter of the gift may become stagnant since brokers and others who deal with the minor, able to disaffirm his transactions at will, do so at their peril. The use of guardianship is thought objectionable principally because of its rigidity, which springs from close court supervision and restrictions on investments, and because of the expense involved in bonds and accountings. Objections to use of a formal trust are principally the expense and trouble involved in drafting an adequate instrument and in bonding or paying a trustee. Frequently with small gifts, therefore, the donor sets up some informal arrangement whose legal validity and effect are questionable.

The Uniform Act offers an alternative method of making the gift. Compliance with its simple requirements incorporates by reference the standardized trust provisions of the statute. It provides basically that an adult may make a gift to one minor by registering securities, and/or by depositing cash in a bank or brokerage account, "in the name of the donor, another adult person (an adult member of the minor's family, a guardian of the minor) or a trust company" as custodian for the minor under the Montana Uniform Gifts to Minors Act. An adult may make a gift to one minor of bearer securities by signing, along with the custodian, a statutory statement of gift. The custodian may be any of those mentioned above except the donor himself, a limitation placed to avoid any question of sufficiency of delivery. The donor is put under a duty to deliver the bearer securities to the custodian, but the Act specifically provides that his failure to do so shall not affect the consummation of the gift.

The custodian has broad powers to manage the gift property under a "prudent man" rule, and in turn he has the duty to use the custodial property for maintenance, education and benefit of the donee to the extent the custodian feels proper. He may receive reasonable compensation for his services and reimbursement of his expenses. The custodian is required to give bond only for cause shown in petition to the court by an interested party, and likewise he is required to account only upon petition granted by the court, though he must keep his records of transactions relating to the gift property open to reasonable inspection.

It would seem that the Act has three goals: "(a) to simplify the making of gifts of securities to minors, (b) to provide a standard and orderly method, offering adequate safeguards to the minor, in lieu of the informal practices that are now frequently followed . . . , and (c) to satisfy the provisions of the Internal Revenue Code relating to the annual gift tax exclusion of $3,000." Use of the statutory method of making gifts does give

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4 Under this statute one is a minor until age 21, in contrast to the general rule in this state that a female attains majority at 18. R.C.M. 1947, § 64-101.
5 Italics added. In the Uniform Act itself the italicized and parenthetical phrases are given as alternatives, leaving the state to choose between (1) permitting any adult in whom the donor has confidence to be custodian and (2) permitting only the minor's relative or guardian. As adopted in Montana, the parenthetical phrase must be taken to qualify the former.
simplicity, economy and certain legality. It is therefore a valuable alternative to existing methods, particularly for smaller gifts. It does, however, do away with some of the traditional safeguards the law has thrown up about the interests of children—notably the close supervision of the court, and the bonding and strict accounting requirements. For large gifts the guardianship or formal trust may well still be preferable.

**Hunting Licenses**

House Bill 42 amends regulations for issuing big game hunting licenses, so as to require all "residents" from 15 to 18 years either to prove that they have held such license in prior years or to "present a certificate of competency in the handling of fire arms." The certificate is to be issued following a course of instruction, which "the department of fish and game shall provide," on the "safe handling of firearms," taught by any person appointed by the "department of fish and game" to give such instruction. It further requires such "certificate of competency" in any case from a resident applicant under 15 years of age. Note that no part of these new qualifications applies to a nonresident. The result is that residents under 18 are subject to a substantial restriction from which nonresidents are exempt, provided they are willing to pay the higher license fee. But perhaps a person shot by a nonresident under 18 who is incompetent in the handling of a gun will fail to see any reason for the distinction.

**The Judiciary**

House Bill 48, proposing submission of an amendment to the Constitution of the State of Montana to provide a plan for the selection of Justices of the Supreme Court patterned after the Missouri Plan, failed. The legislature did, however, enact a law requiring the resignation of any Justice of the Supreme Court of Montana who becomes a candidate for elective office in the State, except where the person is a candidate for the office then held or any other non-partisan judicial office the term of which does not commence earlier than the end of the term of office then held.\footnote{House Bill 13. After amendments a reference to district judges remains, but the title and the mandatory provisions for resignation refer only to justices of the Supreme Court.}

The legislature also provided, in House Bill 124, for a second judge in the Eleventh Judicial District.

**Oil and Gas**

Aside from a number of tax measures and a statute providing for the recording of certain federal and state documents, the bills enacted by the 1957 Legislative Assembly may be characterized as housekeeping bills. For example, House Bill 288 authorizes counties to lease for oil and gas development all reserved or excepted interests acquired by tax deed and to ratify, confirm and adopt any existing mineral or oil and gas leases on such lands. House Bill 298 provides for a composite bond not to exceed $50,000 rather than individual bonds not to exceed $20,000 in the case of oil and gas lessees and their assigns. Under this provision it is not mandatory, but, should the lessee elect, he may furnish the single composite bond rather than separate bonds relating to individual leases or interests therein. House Bill 143 provides for liens for labor and
materials furnished for oil and gas wells and pipelines. The lien extends to the entire leasehold estate, or pipeline as the case may be, to all appurtenances thereon, and to all oil and gas produced from the leasehold and the proceeds thereof insofar as they pertain to the working interest. The lien does not extend to any royalty interest, overriding royalty or oil payments of record prior to the first delivery of goods or services. Fractional interest owners (working interest in only a part of the leasehold) are subject to the lien to the extent of the material or services furnished to their portion of the acreage covered by the lease.

This law also contains provisions for the perfecting of the lien, a definition of priorities as related to mortgages and other liens of record, the rights of subcontractors, and associated provisions.

Three revenue bills of interest to the industry were passed. Senate Bill 202 amends section 60-145 by defining a lease for purposes of the production tax as "that particularly described tract of land contained in a contract in writing, under seal, whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental and other recompense or consideration." Separate leases owned or operated by one lessee in a common reservoir or encompassed within a unit agreement are considered as one lease under the payment schedule specified in the section. House Bill 277 increases the natural gas distributors' license tax to one half of one cent per thousand cubic feet and redefined those subject to the tax as distributors to "consumers" rather than distributors to the "public." House Bill 279 amends section 84-2202 as it relates to the manner of computing the oil producers' license tax. The following rates are specified:

(a) two per cent of an amount determined by multiplying the number of producing wells of such person [producer] on each lease or unit by the total gross value of the first four hundred fifty (450) barrels of petroleum and other mineral or crude oil produced from such lease or unit in each calendar quarter;

(b) two and one half per cent of the total gross value of all such production of such person in excess of the first four hundred fifty (450) barrels per calendar quarter from each lease or unit...

There were also a number of miscellaneous matters germane to the oil and gas industry which likewise affect other areas of the law. Senate Bill 136 provides for the transfer of control and property of the Petroleum Field Station in Billings from the Bureau of Mines and Geology of the School of Mines to the Montana Oil and Gas Conservation Commission. The Montana Blue Sky law is amended by House Bill 226 to include within the definition of security "oil, gas or other mineral lease, right, royalty, or any interest therein...."

House Bill 179 amends section 73-104 relating to the recording of federal patents by providing that "other documents and instruments or duly certified copies thereof issued by or pursuant to the authority of the United States, or the State of Montana, which evidence title to land or affect the title thereof" executed and authenticated pursuant to existing law may be recorded without acknowledgment or further proof. This language is sufficiently general to allow state or federal oil and gas leases an option agree-
ment covering a federal oil and gas lease to be placed of record without being acknowledged. The bill was introduced by request, apparently to cover miscellaneous affidavits, with no intention to change the basic provisions of the law. There are many problems inherent in this seeming innocuous language which will be the subject matter of one of the papers to be presented at the Third Annual Rocky Mountain Mineral Law Institute to be held at the Law School August 1-3, 1957.

There were also a few vetoed bills that were of some interest to the industry. House Bill 55 would have provided for the election of the State Land Commissioner. Substitute House Bill 472 would have appropriated $100,000 for the establishment of a Petroleum Enforcement Division in the State Board of Equalization to investigate and cooperate in the prosecution of all persons and companies utilizing discrimination in the marketing, distributing and producing of petroleum products. House Bill 373 would have established a separate Department of Mines.

**Securities Regulation**

House Bill 226 amends relevant sections of Montana’s “Blue Sky” legislation, enlarging the classes of “securities” subject to registration and regulation to include expressly various types of interests in oil exploration and exploitation (section 1, amending section 66-2002). It also increases the effectiveness of enforcement by expressly granting to the enforcement official (the Investment Commissioner) rule making powers (section 4, amending section 66-2018). At the same time it enlarges the group of securities exempted from the statute’s operation (those listed on the New York and Boston Stock Exchanges and the Chicago Board of Trade) to include those listed on the American and Midwest Stock Exchanges, as well as any other listings designed by the investment commissioner (section 2, amending section 66-2003 (7)).

The act also seriously increases the criminal penalty for general violations thereof (section 6, amending section 66-2024). Moreover, it amends section 66-2023, so as trenchantly to prohibit any and all fraudulent statements, schemes and devices incidental to stock sales, with an equally severe criminal penalty. Heretofore, the frauds interdicted involved primarily representations to the investment commissioner.

It would appear that an unfortunate oversight is contained in the general penalty section, as amended. Originally, although section 66-2024 charged persons acting under this law with strict liability (acting at their peril) and declared that any violation was a felony, the penalty imposed was moderate—$100 to $10,000 fine and/or 90 days to 1 year in prison—consistent with strict liability principles in the criminal field. However, as amended, although this section now recognizes two distinct categories of crime, the first including possible unintentional and innocent violations and the second requiring criminal intent (a knowing or willful sale of stock violating the act or the permit), the penalty is the same for both—a range of $500 to $10,000 in fines, or of from 1 to 10 years in prison, or both. Modern penology does not treat innocent and willful violations of police power regulations so indiscriminately. *Compare § 32 of the Securities Exchange Act of 1934, 48 STAT. 904, as amended, 15 U.S.C. § 78ff (1959), and Uniform Securities Act § 409, under both of which lack of knowledge of rules is a complete defense to imprisonment.*
Montana also would do well to consider seriously the adoption of the Uniform Securities Act, approved only last year by both the Code Commissioners on Uniform State Laws and the American Bar Association. It offers a great improvement in drafting. Our present law mixes, merges, and thus confuses fraudulent sale provisions, regulatory supervision provisions and security registration provisions in single sections. For example, the fraudulent sale of stock prohibition with serious penalties, expressly including for this purpose the stocks generally exempted from registration, is introduced into the act very obscurely in section 66-2023, which originally dealt solely with "false representations to the investment commissioner" under the registration and regulation provisions.

In addition to clarifying much of the pertinent terminology, the Uniform Act treats each of these legislative phases in distinct statutory subdivisions, simplifying greatly both form and substance of the material. In section 414, the Uniform Act also delimits the scope of the Act in interstate commerce. Although this section does not provide pat answers for all possible conflict of laws situations, it certainly would be most helpful in what has been an "uncharted sea" for Montana.

**State and Local Government**

*The Legislature*

Proposals to amend the Montana Constitution to provide for annual meetings of the legislature,⁹ and to provide for interim legislative committees,¹⁰ failed.

House Bill 46 was enacted providing for the creation of a Legislative Council and appropriating $100,000 therefor. The Council is to consist of six members of the House of Representatives, appointed by the Speaker of the House, and six members of the Senate, appointed by the Senate Committee on Committees. No more than three members appointed from each house may be of the same political party. The Council is authorized to employ an executive director and other necessary personnel and to appoint committees, composed of other members of the legislature or private citizens, to make studies and recommendations. It is empowered to investigate and study matters relating to existing and prospective legislation and to prepare bills for presentation to the next legislative assembly. It has authority to investigate the costs of state government and to examine and inspect records of any agency of the State. In the discharge of its duties it may hold hearings, administer oaths and issue subpoenas of persons and documents, obedience to which is to be enforced by proceedings for contempt in the district courts on application of the Council. Questions relating to the legality of the Council and alleged irregularities in connection with Senate appointments are being litigated.¹¹

*Metropolitan Sanitary and Storm Sewer Districts*

House Bill 297 repeals the existing law¹² which empowers counties, cities and towns to combine for the purpose of creating metropolitan sanitary dis-

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⁹ Senate Bill 1.
¹⁰ Senate Bill 7.
¹¹ Previous attempts to establish a Legislative Council and an interim committee were struck down in State ex rel. Schara v. Holmes, 295 P.2d 1045 (Mont. 1956), and State ex rel. Mitchell v. Holmes, 128 Mont. 275, 274 P.2d 611 (1954).

https://scholarship.law.umt.edu/mlr/vol18/iss2/3
tricts. The new legislation empowers boards of county commissioners, with the consent of city and town councils, to create metropolitan sanitary and storm sewer districts to serve inhabitants of both cities and incorporated towns and rural areas within counties. Notice of the passage of the resolution of intent by the county commissioners and of concurrences therein by city or town councils is required to be posted, published and mailed to property owners within the proposed district. Such notice shall describe the improvement, state the estimated cost and designate a time and place for hearing protests. If protests are made by the owners of more than fifty per cent of the area of the proposed district, no further proceedings shall be taken. Assessments to defray costs of installation and maintenance are made on an area basis and the payment of assessments for constructing improvements may be spread over a term of not to exceed twenty years. Provision is made for the publication of notice of resolution levying a special assessment to defray costs of making improvements, stating a place and a time not less than five days after publication for hearing objections. The boards of county commissioners are authorized to apply for and receive federal aid and borrow federal funds which may be available.

Rural Special Improvement District Bonds

House Bill 399 makes provision for the establishment by boards of county commissioners of “Rural Special Improvement District Revolving Funds,” for the payment of rural special improvement bonds or warrants. For the purpose of providing money for the revolving fund, the boards of county commissioners may transfer sums from the general fund of the county and levy and collect a property tax. The transfer is to be considered a loan, and the transfer and tax are not to exceed five per centum of the principal amount of the outstanding bonds and warrants. The revolving fund has a lien for money loaned on the land within the district which is delinquent in payment of assessments, on unpaid assessments whether delinquent or not, and on moneys thereafter coming into the district fund.

City-County Planning

More orderly development within local units of government of the State is contemplated by House Bill 413, a rather elaborate act providing for the creation of city or city-county planning boards with authority to adopt master plans for future growth and development of areas within the governmental units. Prior to enacting an ordinance creating a city planning board, the city council must notify the county commissioners, and the county board must elect to form a city-county planning board or permit the city to form a city planning board. Membership consists not only of officers of the governmental unit involved but also of citizen members. Master plans shall be for the development of the city and such contiguous unincorporated area outside the city as bears a reasonable relation to the development of the city, and they must be approved by the governing bodies of the governmental units represented on the board. After adoption and approval of a master plan, the city council and board of county commissioners are to be guided by it in the pattern of development with reference to public ways, places, structures, water mains, sewers and utilities; the planning board has exclusive control over the approval of all plats involving
lands covered by the master plan and ordinance, and no plat of a subdivision may be filed unless it has been first approved by the planning board; and future structures must conform to the master plan and ordinance, provision being made for improvement permits. Nothing in the act prevents the complete use, development, recovery, and sale of mineral and forest resources within the area covered by a master plan.

Annexations to Cities

Annexations to cities and towns received attention in two acts, which should facilitate certain currently proposed annexations and remove doubts as to the legality of similar annexations which may have been made. House Bill 414 permits the annexation to a municipality of contiguous land which the United States, the State of Montana, or any agency, instrumentality or political subdivision of either, owns or has a beneficial interest in. Annexation of such land follows the filing of a statement by the administrative head of the owner or holder of the beneficial interest that such owner or holder desires to have it annexed, the passage of a resolution of intent to annex by the governing body of the municipality, the publication of such resolution, and a public hearing on the proposed annexation. Prior annexations of such lands are validated. The other act, House Bill 151, amends existing legislation by providing for the annexation by cities and towns of the first class of contiguous unplatted land that has been surveyed and for which a certificate of survey has been filed.

Taxation

Refunds of Income Tax

Senate Bill 219 deals specifically with refunds of overpayments of income tax. It provides that excess income tax payments shall first be credited against any income tax then due and that any balance of such excess shall be refunded. No refund is to be made, however, unless the taxpayer has filed a claim for refund within three years from the time of payment of the tax.

Under this bill, the State Board of Equalization is required to allow or disallow a claim for refund within six months after its filing. If allowed, the refund must be made within sixty days following such action; if disallowed, the State Board of Equalization is required to so notify the taxpayer and to grant a hearing on the matter. This bill permits court review "if the Board disapproves a claim for refund." An argument might be made that if the Board allows a portion of a claim and disallows the rest, review might not be available.

Senate Bill 222 changes the rules relating to court review. Instead of a review upon certiorari by the district court, the new bill calls for the filing of a complaint by the taxpayer against the State Board of Equalization. This complaint must be filed in one of certain specified district courts within six months after the receipt of notice of the decision of the State Board of Equalization. The right of appeal from district court decisions to the Supreme Court is specifically granted by this bill.

Burden of Taxation

The state income tax burden has been increased. Under Substitute House Bill 449, the exemptions have been reduced from $1000 to $600 for
each taxpayer and to $600 for his spouse. However, additional exemptions of $600 are available for those taxpayers and their spouses who attain 65 years of age before the taxable year or who are blind at the end of the taxable year. The additional exemption for dependents has been increased to $600 which may in certain situations result in a lower tax burden than under the old law. These changes bring Montana state income tax exemptions into line with the federal income tax exemptions.

Substitute House Bill 177 correlates the return filing requirements with the reduced exemptions. It provides that every person having a net income for the taxable year of $600 or over ($1,200 if married) shall file a return. This bill contains an ambiguity that existed under prior law. If a married person who has had no income during the year moves into Montana in September or October and thereafter earns less than $1,200, he may not have to file a return under this bill even though, because of proration requirements, he might be considered to have some income tax liability. This bill also makes it clear that payments made under the Korean Bonus Law are exempted from taxation under the Montana state income tax laws. If payment has been made with respect to such income the taxpayer may obtain a refund.

Under Substitute House Bill 364, the income tax burden has been substantially increased by an increase in the rates of tax. The rates now range from one per cent on the first $1,000 net income to five per cent on any net income in excess of $7,000.

The burden has likewise increased with respect to the corporation license tax. House Bill 394 establishes a rate of five per cent upon the total net income received from all sources within the state of Montana by corporations engaged in business in the state.

One statute has been enacted, however, that may be helpful to certain corporations. House Bill 170 provides that the State Board of Equalization must, upon the presentation of satisfactory evidence, determine that the income of corporations from sources within the State of Montana may be properly segregated from income from sources without the state and, having made this determination, the State Board of Equalization must thereupon allow separate accounting. Moreover, the bill provides that decisions of the Board with respect to this matter shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark County. This statutory provision should result in exempting certain corporations from an allocation formula which at times has appeared to swell unreasonably the amount of corporate net income attributed to sources within the state.

Withholding Statements

House Bill 412 requires all Montana employers to give to each employee with his salary or wage check an itemized statement showing the amount deducted for state and federal income taxes, old age and survivors insurance, and all other items for which deductions have been made. The bill further provides that where no deduction is made the employer must

24 It is perhaps ironic that the legislature, while reducing personal exemptions to $600, memorialized Congress to raise the federal exemption from $600 to $700 because of the "increased cost of living." House Joint Memorial 5.
give to the employee a statement that there have been no deductions from his pay check.

**Inheritance Taxes**

In determining the value of property for the purposes of the inheritance tax, House Bill 36 specifically provides that all federal taxes and all Montana State, county and municipal taxes, including all penalties and interest thereon, owing by a decedent at the date of death shall be deductible items.

**Gift Tax**

For many years prior to the 1954 Internal Revenue Code, it was doubtful whether the $3,000 gift tax exclusion was available with respect to gifts to minors. The problem was whether such a gift constituted a future interest because possession and enjoyment by the minor was postponed during his legal disability. If the gift constituted a future interest, the $3,000 gift tax exclusion was not available, with the result that the gift in its entirety would be subject to a gift tax. If it were not a future interest, up to $3,000 of gifts could be made to a minor in each year without even the necessity for filing a gift tax return. The 1954 Federal Internal Revenue Code made it clear that gifts to minors could qualify for the exclusion

.... if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

In order to meet these requirements most donors were put to the trouble and expense of having a trust instrument drafted and of making the gifts in trust. The Uniform Gifts to Minors Act, adopted as House Bill 344, obviates the necessity for such a trust agreement. This Act is designed to meet the requirements set forth above and simply provides that gifts of securities or money to minors may be made by placing the property in the hands of the donor (for securities only), another specified adult person, or a bank with trust powers "as custodian for (name of minor) under the Montana Uniform Gifts to Minors Act." Such property so transferred will presumably qualify for the $3,000 gift tax exclusion.

**Torts**

**Parental Liability for Vandalism**

Senate Bill 158 imposes liability up to $300 upon the parents of any child under 18 living at home who maliciously destroys property belonging to any governmental unit, religious organization or person. Ambiguous construction leaves unclear whether the word "person" is to be construed

\[\text{INT. REV. CODE OF 1954, § 2503 (c).}\]

\[\text{The property rules relating to such gifts are discussed in detail at p. 125 supra.}\]
as including private corporations" and unincorporated associations, but the purpose of the legislation would be fully served only if it is so construed.

Slander; False Imprisonment

House Bill 22, enacted for the protection of merchants, provides that they may request anyone on their premises "to place or keep in full view any merchandise . . . which the merchant has reason to believe he may have removed" for any purpose. There may be no criminal or civil liability for such request. While the statute permits only a bare request and no detention or search, the request should be adequate for any ordinary situation and any greater right would seem unwise.

Trusts

R.C.M. 1935, section 6711 permitted accumulations for minors in two cases: (1) When such accumulation commenced on the creation of the interest out of which the income arose, it had to be made for the benefit of minors then in being, and terminate at the expiration of their minority. (2) When such accumulation was to commence at any time subsequent to the creation of the interest out of which the income arose, it had to commence within the time permitted in the Code for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

R.C.M. 1935, section 6712 provided that in either of the above two cases, if the direction for accumulation was for a longer term than during the minority of the beneficiaries, the direction was void only to the extent of the time beyond such minority.

Then, in 1939, section 6711 was amended. The two cases of accumulations for minors were eliminated, and in their stead accumulations were permitted for one or more persons, with no reference to minors appearing in this revised section. The only limitations stated were that the accumulation had to commence within the time permitted for the vesting of future interests and could not extend beyond the period limiting the time within which the absolute power of alienation of property could be suspended. Strangely enough, section 6712 was not amended at that time. It still referred to the two cases contained section 6711 which, of course, no longer appeared therein.

This peculiar situation was finally corrected this year. House Bill 147 amends section 6712 (now R.C.M. 1947, section 67-413) by providing that all accumulations for a period longer than is presently permitted by section 6711 (now section 67-412) are void only with respect to the period beyond the legal limit. In other words, if a provision in a trust instrument calls for accumulations beyond the period permitted by law, such provision is not invalid in toto. It will be valid for the permitted period, but, of course, the direction for accumulation is invalidated for all periods of time thereafter.

Water

Appropriations from Adjudicated Streams

House Bill 232 permits persons who desire to appropriate from an adjudicated stream to make use of aerial photographs instead of an engineer-

"Cf. R.C.M. 1947, § 19-103."
ing survey. It also provides that water released from a storage reservoir shall not be considered as a part of the natural flow of the adjudicated stream, where the reservoired water was taken pursuant to an appropriation.

County Water Districts

House Bill 310 provides for the organization of County Water Districts. The act is filled with the mechanics of organizing and managing such a District, which will be most helpful to all who work with such an organization. The purpose of the act is to permit such districts to be organized in any part of a county in order to obtain and manage a water supply for an area within a county to be benefitted. As in a Reclamation District, with proper procedure and a sufficient affirmative vote, landowners can be swept into the district against their will; to vote, however, one must be an owner of taxable real property within the boundaries of the proposed district. Such districts are designed to obtain funds on loan from the United States under the Reclamation Act of 1902. They have power to levy taxes, which become a lien upon the property.

Drainage Districts

Senate Bill 14 confers power upon drainage districts to prosecute projects for flood prevention and the conservation, development, utilization and disposal of water. The purpose of the legislation is to enable drainage districts to take advantage of federal aid (services and money) in soil conservation and improvement works for flood prevention and the handling of water. The federal act with which this law dovetails is P.L. 566, 83d Congr., Aug. 4, 1954. That act provides for aid to agencies authorized by state law to carry out the foregoing improvements.

Existing Montana law provides for the mechanics of organizing, planning and operating a drainage district, parallel to the provisions for irrigation districts. But present law does not specifically define purposes and powers. This new law thus bridges the gap between drainage districts and federal aid by authorizing the districts to carry out the aforesaid improvements, and thus qualify for federal aid. Except to the extent necessary clearly to qualify for this federal aid, the existing law on drainage districts remains virtually unchanged.

International Agreements (Sage Creek)

House Bill 104 authorizes the governor to assent (on behalf of the state) to an agreement between the United States and Canada for a division of the waters of Sage Creek. The agreement to which assent is authorized shall provide for a storage reservoir in Canada and a supply canal to the United States. Montana ranchers shall be entitled to one third of the available water out of the first 3,750 acre feet of water available during the water year. Any additional water will (along with two thirds of that first 3,750 acre feet) go to Alberta ranchers, unless there is a total of more than 5,000 acre feet available. In the latter case, Montana ranchers are entitled to one fourth of the available water up to 1,375 acre feet, which is the maximum which will be delivered to the United States. That last figure is one fourth of 7,500 acre feet, and is predicated upon Canadian storage facili-
ties of 7,500 acre-feet capacity. If less capacity is provided for in the reservoir, all of the foregoing share for Montana ranchers will be reduced proportionately.

This act makes reference to the Boundary Waters Treaty of 1909, and provides that Montana ranchers shall waive their rights under article II thereof, so far as Sage Creek is concerned. That article reserves to each of the contracting parties (United States and Canada) control over waters which would flow across the boundary, unless it would result in damage, in which case the injured party may sue on the same footing as one who so suffered where the diversion or interference with flow occurred. Thus this right to damages on the part of Montanans is waived.

Article VI of this treaty provides that the St. Mary and Milk Rivers and their tributaries are to be treated as one stream, and shall be apportioned equally between the two countries. That does not mean that each tributary has to be equally apportioned, however, so presumably the United States (Montana) will be given more of the flow from some other tributary of the St. Mary and Milk Rivers. Such equalization is not a condition of this legislation, however. Sage Creek is a tributary of the Big Sandy, which flows into the Milk River near Havre.

Reservoir Water

Senate Bill 79 is one of the more significant pieces of water legislation in this state. The general purpose of the new law is to enable reservoir owners to conduct reservoired water to the place of irrigation through a natural stream, with the aid of court commissioners to ensure such conduct of the water without misappropriation by water users along the stream.

The law applies only to unadjudicated streams, presumably because the same services of a water commissioner can be obtained on adjudicated streams and supplementary legislation therefore did not seem necessary to the legislature. Such a conclusion ignores the present lack of any precise limitation on the physical extent of an "adjudicated stream"; e.g., if a tributary to the Yellowstone River is adjudicated, to what extent is the entire river system adjudicated? Or if a large stream or river is adjudicated, to what extent is the drainage area affected upstream and downstream, including the tributaries? The necessary rule of reason to be applied has not yet been judicially determined and no statute affords an apparent solution. It also ignores the doubt surrounding the power of a water commissioner over parties on an adjudicated stream who were not joined in the adjudication. Section 89-815 in providing for adjudication does not require joinder of all parties affected by the adjudication, and two cases\(^9\) deny that such a commissioner has any power over unjoined parties.

Quite probably the legislature was wise in ignoring these basic problems for the time being, in view of the limited scope and purpose of the new law. However, the new law, and existing law, is jeopardized by these uncertainties and their possible unsoundness. Existing law should be changed to afford as nearly as possible a completely in rem proceeding rather than the in personam approach currently used. It was not the purpose of this

\(^9\) *State ex rel. McKnight v. District Court*, 111 Mont. 520, 111 P.2d 292 (1941); *State ex rel. Reeder v. District Court*, 100 Mont. 376, 47 P.2d 653 (1935).
law to undertake such renovation of the existing law of adjudicating streams.

Although this new law does not attempt to improve the existing law of adjudicating streams, it does take a step toward improving adjudication procedures within its own province of unadjudicated streams. It does this by providing that the court hearing shall be preceded by the posting of notices "in at least three public places in each county wherein is located a part of the natural channel” through which reservoired water is to be conveyed. Anyone affected by the subject matter of the hearing “may” appear and file written objections. It is not mandatory that affected persons appear or forever after hold their peace.

Notwithstanding the lack of in personam jurisdiction over persons who “may” but do not choose to appear, and the absence of provisions in the new law for the adjudication of their relative rights in rem, the water commissioner appointed under this proceeding is granted jurisdiction to adjust the headgates of all appropriators from the natural channel over the full length of that part of the stream used by the reservoir owner as a conduit. In other words, the commissioner is given power over the property of persons whose rights are not clearly before the court or subject to the jurisdiction of the court. Such power of court and commissioner appears to gain support from at least two cases, but would appear to be questionable on principle (under the procedure provided by the new law) and under authority.

The law requires, as noted above, the posting of notice of hearing “in at least three public places in each county wherein is located a part of the natural channel by which it is proposed to convey the stored water.” The words following “by which” are apparently descriptive of what “natural channel” is involved, but do not necessarily limit such posting to that part of the natural channel which will be used as a conduit. Theoretically, then, and perhaps practically, the petitioner has the problem of deciding how far upstream and downstream he is to post notices of his hearing. The law does not necessarily limit his duty to posting in the counties wherein the “natural channel” is used as a conduit, but rather to counties wherein a part of that “natural channel” is located. The rule of reason would seem to permit petitioner to so limit his posting, but for the time being he cannot be sure that that is the rule of law.

By contrast to the foregoing, the jurisdiction of the water commissioner is nicely limited to “the part of the natural channel used as a means of conveyance of the stored water.”

As a practical matter, our water laws have worked out fairly well in the past and have not led to a large volume of litigation in recent years. This is partly because our state is neither highly industrialized nor crowded with population. Where there is sufficient water people fight in court over their water rights. And it is partly because the Supreme Court of Montana

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State ex rel. Tague v. District Court, 100 Mont. 383, 47 P.2d 649 (1935); State ex rel. Zosel v. District Court, 56 Mont. 578, 185 Pac. 1112 (1919).

State ex rel. McKnight v. District Court, 111 Mont. 520, 111 P.2d 292 (1941); State ex rel. Reeder v. District Court, 100 Mont. 376, 47 P.2d 653 (1935).
has viewed legislative provisions with a practical eye in an attempt to make them work. The present law introduces no new legal problems, but retains (or utilizes) some of the existing patterns of legislation which still contain substantial legal uncertainties. Very possibly these uncertainties will not prevent practical administration of the new law for many years, pending resolution of the uncertainties. If such resolution ultimately renders the laws largely unworkable, it will then be clear how such pitfalls may be avoided.

Wells

Substitute Senate Bill 8 affects persons who dig or drill a water well of any type. It requires the filing of information relating to the drilling, the characteristics of the soil, and the flow with the Clerk and Recorder of the county where the well is located. The State Bureau of Mines and Geology is to furnish the forms on which the information is filed, and they may be obtained from the Clerk and Recorder of each County.

The bill is not designed to have any retroactive effect. In some cases the new law will require several filings of information with respect to the same well, because it is in addition to previously existing filing requirements. Those prior requirements are: (1) chapter 29, title 89, R.C.M. 1947, which requires similar information to be filed with the State Engineer within thirty days after completion of the well; and (2) chapter 13, title 69, R.C.M. 1947, which requires information to be kept, under the supervision of the State Board of Health, with respect to any well which supplies water for public consumption or use. Regulation 89 of the Board of Health requires the driller of such wells to register, to file information regarding the well on forms furnished by the Board, and to give notice to the Board prior to commencing work on the well.

Workmen’s Compensation

Benefits

The legislature has granted substantial increases in the benefits permitted under the Workmen’s Compensation Act in House Bill 120. The minimum benefit is raised from $19.50 to $25.00, the maximum for a single claimant from $26.50 to $28.00, and the maximum where claim is made for six or more persons from $32.50 to $42.50. These increases apply to cases of death, all classes of disability, and to loss of member. However, for partial disability from injury to a member the benefits are limited in time as well as amount to the maximum permissible for loss of the member. The benefit provisions are further amended to permit increase in compensation where the employee’s children, beneficiaries or dependents increase by birth during the benefit period. Maxima are set on the claims of minor dependents. Payment periods for loss of members are generally increased. Serious loss of vision is made equivalent to loss of an eye, permanent total disablement of a member is equated with its loss, and permanent partial loss or partial loss of use of a member is made the basis for proportionate benefits. Finally, the periods of payment for loss of more than one member are to run consecutively, though not to exceed 500 weeks.

The amount payable for burial expenses is raised from $350 to $500; medical and hospital services are now extended from 18 to 36 months; extra medical expenses may be paid in the board’s discretion in case of total per-
permanent disability; and replacement of artificial members may in the board's discretion be made more frequently than every five years.

In the event of serious disfigurement of head or neck the board may now make an additional award up to $2500. If no one is otherwise entitled to any benefits under the act, the parents of a deceased employee are to be paid a lump sum of $3000.

Procedure

Under House Bill 120 the board is now required to specify in writing its reasons for permitting lump sum payments before such approval will be valid.

Time in which the employee must give notice of his injury to the employer or insurer is increased from 30 to 60 days.

The employee may request, or may be required to submit to, a physical examination at the expense of the requesting party. Presumably the physician is to be designated by the board, and his written report may be used in the controversy. This provision covers much the same ground as section 92-609, but is probably not so inconsistent therewith as to cause repeal by implication.

Contributions Under Plan 3

The industrial accident fund is now to be called the industrial insurance fund and Senate Bill 41 uses that title, though the old title still appears in many old sections. Payment by employers enrolled under plan 3 is a percentage of their payroll depending on classification of the employment according to hazard. The rates and detailed classification have heretofore been set out in the statute (though advisory only), but by this new enactment these advisory rates and classifications are withdrawn and their determination left to the board, which must give a 30 day notice before changes become effective.

Classification is still to be based on hazard, and rates are to be sufficient, but no more than sufficient, to provide for the expenses of administering the plan, payment of claims, and necessary reserves.

Section 92-1110 has provided that any class of industry whose contributions to the fund were insufficient to meet claims arising out of that class of industry might be required to make up the deficiency by supplementary assessment. Apparently because the board is now expected to see that there is no deficiency, the section is replaced by a provision that any unneeded surplus in the fund at the year's end may be returned, under regulations of the board, to the employers who have contributed more than the liabilities chargeable against them, taking into account their accident record during the year.

Industrial Administration Fund

Substitute House Bill 111 has substantially reformed the system for paying the cost of administering the Workmen's Compensation Act. The industrial administration fund, originally established by direct appropriation and augmented by fees for yearly safety inspections (which fees are now abolished by amendment), shall henceforth consist of (1) fees paid for copies of board documents and publications, (2) assessment of a maximum
of .02 per cent of their payroll for employers self-insured under plan 1, (3) assessment of a maximum of 1.75 per cent of the gross annual direct premiums collected by insurers of employers under plan 2, less return premiums, to replace the flat $3 per policy heretofore required, (4) fees for boiler inspections and operating engineers' licenses, and (5) assessment of a maximum of 10 per cent of the gross annual direct premiums, less return premiums, collected by the industrial insurance fund from employers under plan 3.

All of the above monies are available for payment of the costs of administering the Workmen's Compensation Act, except that 62 per cent of item 5 (the assessment against premiums paid by plan 3 employers) shall be segregated into a separate "industrial insurance fund account" in the industrial administration fund, reserved for the costs of administering plan 3 and the safety inspections of plan 3 employers.

**Occupational Disease**

Significant among legislation which failed to pass the legislature was that to extend coverage of the Workmen's Compensation Act to occupational disease. Though both political parties had promised such legislation, and over a dozen bills were introduced to effect that purpose, the efforts came to naught again when disagreement over subordinate provisions prevented passage in any form.