

MINUTES OF THE MEETING
TAXATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 15, 1987

The meeting of the Taxation Committee was called to order by Chairman Ramirez on January 15, 1987, at 9 a.m. in Room 312B of the State Capitol.

ROLL CALL: All members of the Committee were present. Also present was Dave Bohyer, Researcher, Legislative Council.

REPORT FROM WESTERN SUGAR ON TAXATION ISSUES: Jack Fulton, Manager, Governmental Relations, Western Sugar, told the Committee the company owns six sugar beet processing plants in western states. He explained there are 250 sugar beet growers in Montana, who sell the produce to Western Sugar.

Mr. Fulton advised committee members the assessed value of the Billings plant is \$6.048 million, although it was purchased for much less in March, 1985, when the prior owner was in bankruptcy proceedings. He said most states look at equipment differently than Montana does.

Mr. Fulton explained that a piece of equipment valued at \$150,000, would be taxed at \$500-700 in Nebraska and Wyoming, \$1,300-1,500 in Colorado, and \$1,000 in Montana. He commented that Montana remains the highest even when the sales tax in those states is taken into consideration.

Mr. Fulton stated that 65% of Montana's tax liability is due to Workers' Compensation, which is more than double that of the state of Minnesota. He commented this appears to be an ideal year to change property taxes and workers' compensation coverage. (Exhibit #1)

QUESTIONS FROM THE COMMITTEE: Rep. Ellison asked why labor was only 18%, while production was shown as 24% of Western Sugar's gross. Mr. Fulton replied that the Billings plant is very efficient.

Rep. Schye asked if Wyoming has a workers' compensation deductible. Mr. Fulton replied Wyoming is a "captive" state and does not have a deductible. He added that attorneys won't touch workers' compensation cases in Wyoming as they are deemed to not be worthwhile.

Mr. Fulton told the Committee his company protested both its 1985 and 1986 tax assessments of \$19 million.

Rep. Asay asked if Western Sugar had the property appraised at the time of purchase. Mr. Fulton replied a firm from Oregon was hired to appraise the property in Billings, since half of the sugar beet processing plants in western states have sold since 1974. He said the property was appraised at \$4 million.

CONSIDERATION OF HOUSE BILL NO. 148: Rep. Gene Donaldson, House District 43, sponsor of HB 148, told the Committee the bill would transfer two quarters of coal tax collections to the general fund to balance the state budget. He said there is a need for a technical amendment on page 2, line 6 of the bill, to change language to monies affected this year instead of next year.

Rep. Donaldson explained that the Legislature has tried three times to balance the state budget without success and that he sees his bill as the only alternative (Exhibit #2).

Rep. Donaldson also provided committee members with copies of a report of the Legislative Council, specifically referring to page 11 of the report (Exhibit #2c).

Rep. Donaldson advised the Committee he questioned whether the bill was the responsible thing to do, and reaffirmed his belief that it was the only alternative right now. He explained that he is personally not very supportive of this alternative, but wants to respond to an immediate need for action.

PROPOSERS: Dave Hunter, Director, Office of Budget and Program Planning (OBPP), said the Legislature has a need to meet the financial obligations of the state, which are somewhere between \$13 and 17 million in the red. He explained it is not an easy choice, but it is also the recommendation of the Governor.

Mr. Hunter explained that the Governor has, however, recommended leaving 25% to the Economic Development Board, while HB 148 would eliminate half of that investment for 1987.

Mr. Hunter said the Legislature needs to make certain it is transferring enough funds for the entire biennium (through FY88), and said he would get together with DNRC to resolve how water bonds are affected. He commented his office would be offering an amendment to the bill.

OPPOSERS: Russ Brown, Northern Plains Resource Council, said section 17-6-303, MCA, outlines the purpose of the coal severance trust, to compensate future generations for loss of a resource, to develop a strong economy, and to provide a

healthy environment. He urged the Committee to vote against HB 148.

Jean Souvigny, Montana Chapter of the Sierra Club, read from a prepared statement in opposition to the bill. She urged the Committee to remember the intent of the people on the use of coal tax dollars, and asked them to vote against the bill.

Eric Feaver, Executive Director, Montana Education Association, (MEA), urged the Committee to give the bill a Do Not Pass recommendation.

Terry Mennow, Montana Federation of Teachers and School Employees, told the Committee there needs to be a long term solution to this long term problem, but not a band-aid approach. She asked the Committee to oppose the bill.

Harriet Meloy, Montana League of Women Voters, stated her opposition to HB 148.

Rep. Hal Harper told the Committee he agreed with Rep. Donaldson's philosophy and purpose, but the bill would not begin to provide the amount of money that will eventually be necessary.

Rep. Harper stated that if the Legislature took the easy way out right now, it could happen again, instead of balancing expenditures to revenue. He asked what amount of revenue was anticipated and said if the Legislature begins to rob the coal trust fund, it will become revenue. He commented that legislators are being told they have no choice, yet even the sponsor of the bill does not agree with the philosophy of the bill.

Rep. Harper stated he could vote for this legislation if it would prevent such action in the future, but it seemed like easy money to him and sets the state on a track it can't get off of. He beseeched the Committee to not take the bill lightly.

Rep. Bob Raney said that if the Legislature is serious about this situation, it could lower coal tax fund contributions. He urged the Committee to vote no on HB 148.

QUESTIONS ON HOUSE BILL 148: Rep. Sands asked Rep. Harper if the Committee should not address the problem now and should wait until 1989. Rep. Harper replied that the Legislature can always say the budget is balanced as long as it has the reserves. He stated that if the Legislature chooses to do this, it is a mockery of the three-fourths vote of the trust fund.

Rep. Sands again asked how and when the budget should be balanced. Rep. Harper replied the legislature must address the problem now, and could do so by cutting services or raising revenue.

Rep. Harp asked Dave Hunter, OBPP, if the move to the coal trust fund were a way to address the fact that the state is spending more than it is making. He commented that amount has been about \$105,000 each year between 1982 and 1986. Rep. Harp stated there is a need to bring on-going expenses into line with on-going revenue. He said the Legislature should be able to achieve this goal by 1990 or 1991, if the level of expenditures is not increased.

Chairman Ramirez requested that Judy Rippingale, Legislative Fiscal Analyst explain to the Committee the effect of HB 148 on FY87 ending general fund balance. Ms. Rippingale stated that her report was self-explanatory (Exhibit #2a).

Chairman Ramirez asked Dave Hunter, OBPP, to provide proposed amendments to HB 148 later this date, in order that executive action might be taken on the bill, January 15, 1987.

Chairman Ramirez asked if Rep. Williams' bill (not yet drafted) and HB 148 were compatible. Dave Hunter replied they could be made to be compatible.

Rep. Sands asked if the year would end in deficit if HB 148 does not pass. Dave Hunter replied that he hoped this would not be the case, as the Legislature has an obligation to balance the budget.

Rep. Patterson asked Judy Rippingale which figures in her report were correct (Exhibit #2a). Dave Hunter replied that both the figures for the OBPP and the LFA are presented fairly, and are within 1% of each other.

Rep. Harp asked how the state would recover from its imbalance in 1988 and 1989. Dave Hunter replied his answer would be the same as it was to Rep. Patterson.

Chairman Ramirez asked Rep. Donaldson if he had outlined any course of action to make necessary cuts. Rep. Donaldson replied it would be very difficult and time-consuming, but not impossible. He added that he believed it would be counter productive at this time in the current FY, and said he had no ready solution right now.

CLOSING: Rep. Donaldson replied he had no particular problem with the OBPP amendments, except that the amount proposed by that office would be inadequate to balance the

budget. He said he had some question as to what the Constitution means by "anticipated revenue", and told the Committee the Legislature can't wait until the 80th day to make these decisions.

Rep. Donaldson stated that HB 148 is a test bill, and will identify where votes are. He requested the Committee give the bill favorable consideration and bring it out on the House floor for discussion.

OTHER BUSINESS: Chairman Ramirez advised committee members that Rep. Williams has made a request for a bill which would raise \$75 million in revenue from coal funds. He commented it might be good to look at the bill and to discuss it early.

Chairman Ramirez stated the leadership would like to put HB 148 on second reading to get the honest opinions of House members, and that he would hold executive session on the bill, January 16, 1987.

Rep. Raney explained that an adverse committee report would be alright, and said everyone on the Committee already knows how he or she is going to vote on the bill.

Rep. Gilbert stated his agreement that it is important to get HB 148 out of the Committee.

Rep. Ellison commented that he would rather have the bill debated on second reading than have it heard on Order of Business No. 2.

Rep. Williams told the Committee his bill would include HB 148.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 10:14 a.m.


Representative Jack Ramirez
Chairman

#1
1-15-87
West Sugar
Taxation
Issues

PROPERTY TAXES

THE WESTERN SUGAR COMPANY

1986 PROPERTY TAXES

PER CWT. PRODUCTION

<u>LOCATION</u>	<u>1986-1987 PRODUCTION</u>	<u>1986 PROPERTY TAX</u>	<u>TAXES PER CWT. PRODUCED</u>
Scottsbluff	1,339,189	\$ 105,037.48	\$.078
Bayard	840,500	66,127.55	.079
Mitchell	829,513	66,932.52	.084
BILLINGS	1,846,780	589,518.79	.319
Lovell	902,942	68,160.08	.075
Greeley	693,741	73,673.85	.106
Fort Morgan	<u>1,240,591</u>	<u>147,282.00</u>	<u>.155</u>
 TOTAL	 7,693,256	 \$1,116,732.27	 .145

BILLINGS: 24% of PRODUCTION

52% of TOTAL TAXES

COST PER CWT. 2 to 4 times higher than other locations.

THE WESTERN SUGAR COMPANY

1986 PROPERTY TAXES
PER DAILY SLICE

	<u>MARKET</u> <u>VALUE</u>	<u>ASSESSED</u> <u>VALUE</u>	<u>1986</u> <u>ESTIMATED</u> <u>TAXES</u>	<u>TAXES PER</u> <u>DAILY SLICE</u>
<u>SCOTTSBLUFF</u>				
Land & Buildings	\$ 2,374,918	2,374,918		
Personal Property	<u>2,234,415</u>	<u>2,234,415</u>		
TOTAL SCOTTSBLUFF	\$ 4,609,333	\$ 4,609,333	\$105,037.48	32.8
<u>GERING</u>				
Land & Buildings	\$ 1,567,861	1,567,861		
Personal Property	<u>638,460</u>	<u>638,460</u>		
TOTAL GERING	\$ 2,206,321	\$ 2,206,321	\$ 50,277.64	N/A
<u>BAYARD</u>				
Land & Buildings	\$ 1,459,512	\$ 1,459,512		
Personal Property	<u>1,505,450</u>	<u>1,505,450</u>		
TOTAL BAYARD	\$ 2,964,962	\$ 2,964,962	\$ 66,127.55	29.4
<u>MITCHELL</u>				
Land & Buildings	\$ 1,448,341	\$ 1,448,341		
Personal Property	<u>1,488,845</u>	<u>1,488,845</u>		
TOTAL MITCHELL	\$ 2,937,186	\$ 2,937,186	\$ 66,932.52	29.7
<u>BILLINGS</u>				
Land	\$ 1,325,248	\$ 51,175		
Buildings	4,739,233	182,934		
Personal Property	<u>13,350,337</u>	<u>1,400,040</u>		
TOTAL BILLINGS	\$19,414,818	\$ 1,634,149	\$589,518.79*	147.4
<u>LOVELL</u>				
Land	\$ 51,562	\$ 33,671		
Buildings	\$ 1,846,820	\$ 279,288		
Personal Property	<u>4,480,420</u>	<u>559,881</u>		
TOTAL LOVELL	\$ 6,378,802	\$ 872,840	\$ 68,160.08*	30.9

* Actual

THE WESTERN SUGAR COMPANY

1986 PROPERTY TAXES
PER DAILY SLICE

	<u>MARKET</u> <u>VALUE</u>	<u>ASSESSED</u> <u>VALUE</u>	<u>1986</u> <u>ESTIMATED</u> <u>TAXES</u>	<u>TAXES PER</u> <u>DAILY SLICE</u>
<u>GREELEY</u>				
Land	\$ 673,290	\$ 193,239		
Buildings	962,465	279,115		
Personal Property	<u>1,324,605</u>	<u>386,135</u>		
TOTAL GREELEY	\$ 2,960,360	\$ 858,489	\$ 73,673.85	33.5
<u>FORT MORGAN</u>				
Land	\$ 328,790	\$ 95,300		
Buildings	1,821,585	528,260		
Personal Property	<u>4,424,451</u>	<u>1,283,090</u>		
TOTAL FORT MORGAN	\$ 6,574,826	1,906,650	\$ 147,282.00	44.6
TOTAL	\$48,046,608	\$17,989,930	\$1,167,009.91	

JAF:sg
10/7/86
REF 0568D

WESTERN SUGAR COMPANY
PROPERTY TAXES BY CLASSIFICATION

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>ASSESSED VALUE</u>	<u>PERCENT OF ASSESSMENT</u>	<u>COVERED INITIATIVE 105</u>
4	Land & Buildings Industrial Sites	\$ 256,481	15.6%	Yes
5	Pollution Equipment	23,408	1.4%	No
8	Factory M&E	1,365,207	82.8%	No
9	Office F&E	<u>3,769</u>	<u>.2%</u>	Yes
	TOTAL	<u>\$1,648,865</u>	<u>100.0%</u>	

THE WESTERN SUGAR COMPANY

- PROPERTY TAX COMPARISON -

Hypothetical Equipment Purchased
at all Locations in 1965

<u>FACTORY LOCATION</u>	<u>1965 COST</u>	<u>1986 MARKET VALUE</u>	<u>1986 TAXABLE VALUE</u>	<u>1986 MILL LEVY</u>	<u>1986 TAXES</u>
Scottsbluff, Nebraska	\$150,000	\$30,000	\$30,000	23.45948	\$ 703.78
Bayard, Nebraska	150,000	30,000	30,000	21.5448	646.34
Mitchell, Nebraska	150,000	30,000	30,000	22.76316	682.89
Lovell, Wyoming	150,000	68,705	7,560	78.51	593.54
Greeley, Colorado	150,000	61,170	17,739	85.818	1,522.33
Fort Morgan, Colorado	150,000	61,170	17,739	77.248	1,370.30
Billings, Montana	150,000	99,060	10,897	358.008	3,901.21

Identical equipment with the same Acquisition Cost. Taxes at Billings, Montana are 2-1/2 times to 6-1/2 times higher than other locations.

Montana Calculation:

150,000 x 3.303 = Replacement Cost x
20% = Market Value x
11% = Taxable Value

J.A.Fulton
12/15/86
REF 0674D

THE WESTERN SUGAR COMPANY

TAX COMPARISON

REPRESENTATIVE SITES - 1985-86

	Scottsbluff Nebraska	Greeley Colorado	Lovell Wyoming	Billings Montana
Sales & Use Tax ⁽¹⁾	118,774	44,588	60,067	-0-(2)
Property Taxes	\$105,037	\$ 73,674	\$ 68,160	\$589,519
Total	\$223,811	\$118,262	\$128,227	\$589,519
Cost Per Cwt.	\$0.167	\$0.170	\$0.142	\$0.319
Cost Per Daily Slice	\$69.9	\$53.8	\$58.3	\$147.4

(1) Rates for our operating facilities are:

Nebraska - 3-1/2% Colorado - 3% Wyoming - 3% Montana - 0%

(2) If Montana had Sales and Use Taxes comparable to our other operating states (3%), our sales tax expense for Fiscal 1986 would have been about \$152,918.00.

REF:0200W

UTILITY CHARGES

THE WESTERN SUGAR COMPANY

COST OF DISTRIBUTION

GAS PER MCF

BILLINGS, MONTANA	\$0.816
Lovell, Wyoming	\$0.205

Projected Addition Cost Fiscal 1986-1987:

350,000 @ .611 = \$213,850.00

Both locations served by same supplier - from same field.

WORKMENS COMPENSATION

THE WESTERN SUGAR COMPANY

COMPARISON
WORKMENS COMPENSATION

<u>LOCATION</u>	<u>RATE</u> <u>FACTORY WORKERS</u>	<u>ESTIMATED</u> <u>ANNUAL PAYROLL</u>	<u>ESTIMATED</u> <u>MODIFIED</u> <u>PREMIUM</u>
Colorado	\$10.79	\$ 6,951,588	\$332,610.00
Wyoming	1.00	2,224,927	16,687.00
Nebraska	5.06	9,279,892	298,520.00
MONTANA	31.50	<u>4,008,765</u>	<u>815,502.00</u>
TOTAL		\$22,465,172	\$1,463,319.00

MONTANA: 17.8% of TOTAL PAYROLL
55.7% of TOTAL PREMIUM

THE WESTERN SUGAR COMPANY

EMPLOYMENT - FACTORY OPERATIONS

<u>LOCATION</u>	<u>NUMBER EMPLOYEES</u>	<u>PERCENT OF TOTAL EMPLOYEES</u>	<u>PERCENT OF TOTAL PREMIUM</u>
Colorado	367	26%	22.7%
Nebraska	644	45%	20.4%
Wyoming	152	11%	1.2
MONTANA	<u>260</u>	<u>18%</u>	<u>55.7</u>
	1,423	100%	100.0%

THE WESTERN SUGAR COMPANY
WORKMEN COMPENSATION TAXES
PER CWT. OF PRODUCTION

<u>LOCATION</u>	<u>1986-1987 PRODUCTION</u>	<u>WORKMENS COMP. TAXES</u>	<u>COST PER CWT. PRODUCED</u>
Nebraska	3,009,202	\$ 298,520.00	\$.085
Colorado*	1,934,332	332,610.00	.172
Wyoming	902,942	16,687.00	.018
MONTANA	<u>1,846,780</u>	<u>815,502.00</u>	<u>.442</u>
TOTAL	7,693,256	\$1,463,319.00	.190

* Colorado includes General Office.

BILLINGS: 24% of TOTAL PRODUCTION

56% of TOTAL PREMIUM

Two and one-half to twenty-one times higher than other locations.

WORKMEN COMPENSATION RATES

BEET PROCESSING STATES
(Per \$100.00 Payroll)

<u>LOCATION</u>	<u>8810 CLERICAL</u>	<u>8209 AGRICULTURAL</u>	<u>2030 FACTORY WORKERS</u>
California	.64	10.48	12.12
Colorado	.26	4.21	10.79
Idaho	.33	6.24	9.32
Michigan	.35	.69	3.59
Minnesota	.36	7.93	16.82
MONTANA	.80	11.88	31.50
Nebraska	.17	2.77	5.06
North Dakota	.22	1.22	5.90
Ohio	.13	.37	3.14
Oregon	.79	11.43	14.50
Utah	.22	3.43	5.53
Wyoming	1.00	1.00	1.00

EXHIBIT 2
DATE 1-15-87
HB 148

Amendment to House Bill 148:

1. Page 2, line 6.
Following: "December"
Strike: "30, 1987, and March 30, 1988"
Insert: "31, 1986, and March 31, 1987"

EX 2a
1-15
HB 148

DATE 1-14-87
HB 148

Effect of HB 148 on Fiscal 1987 Ending General Fund Balance
(Millions)

	<u>Executive</u>	<u>LFA</u>
Reported Ending Fund Balance Projection	\$26.97	\$(17.92)
Less: Coal Tax Transfer	29.21	
Permanent Trust Earnings Transfer	4.94	
Local Government Block Grant Omission	<u>6.50</u>	<u> </u>
Current Law Ending Fund Balance	\$(13.68)	\$(17.92)
Revenue From HB 148	<u>19.27</u>	<u>19.27</u>
Ending Fund Balance With HB 148	<u><u>\$ 5.59</u></u>	<u><u>\$ 1.35</u></u>

CN1:kj:hb148.

26
15
148

EXHIBIT # 26
DATE 1-15-87
HB 148

ARTICLE 8, SECTION 9
MONTANA CONSTITUTION

Section 9. Balanced Budget. Appropriations by the legislature shall not exceed anticipated revenue.

145
HB146

EXHIBIT # 20
DATE 1-15-87
HB 148

BALANCED BUDGET

CONSIDERATIONS

Legal Memorandum



Montana Legislative Council

Prepared by
MONTANA LEGISLATIVE COUNCIL
Room 138
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Helena, Montana 59620
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BALANCED BUDGET CONSIDERATIONS

Prepared by

Gregory J. Petesch
Director of Legal Services

Montana Legislative Council

November 1986

The Office of the Legislative Fiscal Analyst has asked for an opinion on several questions concerning Article VIII, Section 9 of the Montana Constitution. The questions raised are as follows:

- 1) Is there a constitutional or statutory prohibition against ending the 1987 biennium with a negative general fund balance?
- 2) What is the time frame contemplated by Article VIII, Section 9 of the Montana Constitution?
- 3) Since the 50th Legislature may make appropriation and revenue decisions for fiscal years 1987 through 1989, is the forecast of a positive general fund balance for the end of that period (June 30, 1989), sufficient to meet the requirements of Article VIII, Section 9, of the Montana Constitution?

I will attempt to answer the questions presented by a general discussion of the background materials and case law related to Article VIII, Section 9.

Article VIII, Section 9, of the Montana Constitution provides:

Balanced Budget. Appropriations by the Legislature shall not exceed anticipated revenue.

This provision is based upon Article XII, Section 12 of the 1889 Montana Constitution, which provided:

No appropriation shall be made nor any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriations or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

In construing the rate of taxation allowable under Article XII, Section 12 of the 1889 Constitution, the Montana Supreme Court said that:

The limitation is addressed to the legislature itself, the taxing body, exclusively, and not any other body. It therefore becomes operative upon its action, and then only when it is engaged in the discharge of its duties in this regard. At its regular sessions it is compelled to act upon the facts at hand and conditions determinable from the circumstances as they exist. It cannot be required to anticipate all the conditions which may possibly arise in the interim; nor may it, in undertaking to anticipate supposed contingencies, incorporate in its Acts such conditions and provisos as will render it impossible for the disbursing officers to carry forward the business of government, or require them, in

order to do so, to exercise the judgment and discretion which appertains primarily and exclusively to its own department. St. ex rel. Bennett v. St. Bd. of Examiners, 40 M 59, 65, 104 p. 1055 (1909).

In St. ex rel. Toomey v. St. Bd. of Examiners, 74 M 1, 238 p. 316 (1925), the court was directly confronted with a challenge to an appropriation statute which, it was contended, authorized expenditures during the fiscal years ending June 30, 1926, and June 30, 1927, of over \$1,000,000 in excess of the total tax provided by law for those fiscal years. The court said that while Article XII, Section 12 seemed to limit such appropriations or expenditures to the "total tax," the legitimate appropriations and expenditures cover the anticipated income from all sources, subject to appropriation. In Fergus v. Brady, 277 Ill. 272, Ann. Cas. 1918B, 220, 115 N. E. 393, this fact is made clear by the following statement:

There is a very large amount of money paid into the state treasury from other sources than direct taxation, and the ordinary meaning of the word is the total income of the government, derived from all sources, subject to be applied to public purposes. It would not be reasonable to say that appropriations which are not to exceed income should be limited to moneys raised by direct taxation while there are large sums of money which may be applied to the purposes of the government not taken into account. Toomey, at 11.

The court then cited Bennett supra. for the proposition that the constitutional provision included anticipated income as well as income from all available sources. The court went on to decline to determine whether the challenged appropriation act violated Article XII,

Section 12 of the 1889 Montana Constitution, stating that the challenged act had been passed and approved prior to the general appropriation act so that the realtor had in effect challenged the wrong act. The court said:

Whether the passage and approval of the general appropriation bill did, in fact, violate this provision of the Constitution is a question not before us in this action, and we expressly disavow any intention, by anything said in this opinion, to intimate as to how this question, if properly presented, would be determined. Toomey at 15.

Eight years later the court was directly confronted with the question. A challenge was brought alleging:

. . . that the Twenty-Second Legislative Assembly appropriated certain sums to defray the expenses of the state government for the fiscal year ending June 30, 1932, and also for the fiscal year ending June 30, 1933; that on June 30, 1931, there were outstanding registered and unpaid warrants against the general fund amounting to the sum of \$3,489,084; that as the warrants were presented the revenues received during the fiscal years covered by said appropriations were applied in payment of general fund warrants in the order of their registration, and the sum appropriated for each of said fiscal years were slightly in excess of the actual receipts.

It was contended that the outstanding registered warrants were illegal and void as violating Article XII, Section 12. The court said that:

. . . (the) existing exigent reasons for the enactment of House Bill No. 22 may be briefly stated as follows: The menace of the warrants, which have been accumulating for a period of about ten years, has injuriously affected the financial standing and

operations of the state. They have embarrassed the fiscal officers, in that income, otherwise available for current expenses, has been directed toward the discharge of a portion of the old warrants and toward the payment of interest on all outstanding warrants. For instance, it is important to note that for the fiscal year ending June 30, 1932, the actual income equaled 99.4 per cent. of the legislative appropriations, and for the fiscal year ending June 30, 1933, the collected income to this date plus the estimated income for the rest of the year equals 97.9 per cent. of the appropriations for the period. These figures indicate about as near a balance between estimated income and appropriations as it would be humanly possible to forecast. . . .

Under the Constitution appropriations may be made estimated upon the receipts from revenues to be collected during the fiscal year for which the appropriation is made. State revenues are derived from property taxes and a large number of license taxes, and estimates, however honestly made, are bound to be mere approximations which may be somewhat greater than the amounts received in the treasury. St. ex rel. Tipton v. Erickson, 93 M 466, 472, 19 P.2d 227 (1933).

The court analyzed the legislative role in setting the budget as follows:

The amount of taxes to be collected as a result of the levy and assessment for any given biennium may be ascertained with reasonable certainty, but the percentage of delinquencies in ad valorem taxes and the falling off in license taxes within the ensuing two years depend upon factors which cannot always be foreseen with even a reasonable degree of accuracy; and while appropriations may be made in absolute good faith and apparent good judgment, well within the reasonably anticipated receipts of the state, unforeseen contingencies may cause the actual receipts to fall far short of those reasonably anticipated, and thus, unavoidably, require the registration of

warrants in substantial amounts issued in payment for the necessary and proper expenses of the state government. Such a situation does not justify a declaration that the warrants so issued and registered are invalid, or that the appropriations, on the authority of which the indebtedness represented by warrants was incurred, are unconstitutional. *Id.* at 473.

Recognizing that the court in Toomey supra. had expressly declined to rule on the question presented, the court said:

Here it appears from the petition on file that the total of all appropriations made by the last Legislative Assembly is well within the reasonably anticipated income of the state for the period covered; and it is asserted that these appropriations are unconstitutional only because of the existence, at the time they were made, of the overdraft of outstanding warrant indebtedness of the state. This contention is without merit, for the reason that it was never within the contemplation of the framers of our Constitution that any prohibition incorporated in that instrument should bring the state government to an impasse; and if the provision now under consideration should be interpreted to bring about a situation where the state government must cease to function, and where the lives, liberties, and property of the people must go unprotected, that provision must yield to the paramount purpose of the Constitution to create and perpetuate a state government for the protection of its people in their inalienable right to life, liberty, and the pursuit of happiness. Tipton at 474.

The court then decided the issue by holding:

. . . that section 12, Article XII, has to do only with the relation to future expenditures to income so far, at least, as the appropriations are made under constitutional mandates and that the appropriations made and expenditures authorized, and which resulted

in the registered warrants attacked, did not exceed the total tax then provided by law and applicable thereto, within the meaning of that section.

The record does not disclose that any prior assemblies had made appropriations in excess of revenues reasonably anticipated from existing sources of income. This court will indulge the presumption that the legislature acted in good faith in the making of appropriations in estimating the amount of anticipated revenue as a basis upon which appropriations were made, in the absence of a showing to the contrary. Tipton at 475.

The court then held that the warrants were valid obligations of the state.

In 1945, a challenge under Article XII, Section 12 was brought to an act appropriating \$30,000 from the general fund surplus as compensation for an architect for preparing plans and specifications for an addition to the Capitol. The court found that:

. . . the purpose of this section was to prevent the legislative assembly from plunging the state into debt by the appropriation of money or the incurring of obligations for the payment of which sufficient funds are not made available. Graham v. St. Bd. of Examiners, 116 M 584, 588, 155 P.2d 956 (1945).

The court went on to hold that:

. . . the words "total tax" mean, and were intended by the framers of the Constitution to mean, not only revenue from taxes but all forms of revenue derived by the state from any source which might be used to defray the expense of the state government. Graham at 591.

The court said:

We think that the meaning of section 12, Article XII of the Constitution is that no appropriation shall be made nor any expenditure authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total of funds available, and applicable to such appropriation or expenditure; and further that the funds available for such purpose include not only funds in the treasury, not otherwise appropriated, but also monies to be derived from taxes and other sources provided for by the legislative assembly for such year. Graham at 592.

In 1948, a mandamus action was brought to compel the Board of Examiners to pay claims of the State Aeronautics Commission from funds in the state aviation fund derived from the gasoline license tax for aircraft. It was contended that the payment was subject to the provision of Article XII, Section 12 that "no appropriation of public moneys shall be made for longer than two years". The court found that the provisions of Article XII of the 1889 Constitution had

. . . no application to special or trust funds which have never been placed in the general funds of the state. St. Aeronautics Comm. v. St. Bd. of Examiners 121 M 402, 410, 194 P.2d 633 (1948).

This holding was expressly overruled in Bd. of Regents v. Judge, 168 M 433, 543 P.2d 1323 (1975), where the court found that the 1972 Constitution had broadened the scope of the appropriation power. *Id.* at 445. The legislative appropriation power now extends beyond the general fund and encompasses all those public operating funds of state government.

The holdings prior to Board of Regents v. Judge supra. illustrate the state of interpretation of Article XII, Section 12 of the 1889 Constitution at the time the 1971 Constitutional Convention was convened.

The Revenue and Finance Committee of the 1971 Montana Constitutional Convention proposed Article VIII, Section 9 as follows:

Section 9. Appropriations by the legislative assembly shall not exceed anticipated revenues during any budget period.

The Committee comment provided:

This proposed section is similar in effect to present Section 12 of Article XII. It requires the state to operate under a "balanced budget" philosophy, but establishes that doctrine in much simpler language. Although the state may have trouble operating in the black, since it can only estimate the amount of revenues coming in any budget period, this section requires the legislative assembly to stay within those estimated limits when it appropriates funds. Montana Constitutional Convention Transcripts Vol. II, p. 595.

The style and drafting committee of the Constitutional Convention revised the provision as follows:

Section 9. BALANCED BUDGET.
Appropriations by the ~~Legislative-Assembly~~
legislature shall not exceed anticipated
revenues ~~revenue during-any-budget-period.~~
Montana Constitutional Convention Transcripts
Vol. II, p. 949.

The explanation for the changes were that they served brevity and clarity without altering substance. Id. at 950. There was no debate or discussion on Section 9.

Delegate Rygg, Chairman of the Revenue and Finance Committee, introduced Section 9 by saying:

This section is similar to Section 12 of Article XII, although it does not have near the words the present article has. It merely requires the state to operate under a balanced budget inasmuch as it is possible to determine the anticipated revenue. Most states have a similar requirement, and the consensus of the committee was that the state should still try to operate in the black. We feel that it is important enough to ask you to retain it in the present Constitution. Thank you, Mr. Chairman. (emphasis supplied) Verbatim Transcript, Montana Constitutional Convention Vol. 5, p. 1508.

Section 9 was then adopted by unanimous voice vote. Id. at 1509.

The language used in the Committee comment and by Delegate Rygg imply that the Legislature must appropriate within "anticipated revenue". It appears that Article VIII, Section 9, may only require a balanced budget "philosophy". There have been no challenges to a budget adopted pursuant to Article VIII, Section 9, because there has never been an anticipated negative general fund balance until the current biennium. On its face, Article VIII, Section 9 does not prohibit ending the 1987 biennium with a negative general fund balance. The Legislature has not implemented Article VIII, Section 9, statutorily, so that there is no statutory prohibition against ending the 1987 biennium with a negative general fund balance.

The question of the time frame contemplated by Article VIII, Section 9 of the Montana Constitution was addressed by the Supreme Court in the case of Grossman v. St., M, 682 P.2d 1319, 41 St. Rep. 804 (1984).

Grossman alleged that the provisions of 17-5-701 through 17-5-719, MCA, violated Article VIII, Section 9, contending that the constitutional framers intended to continue in effect the portion of Article XII, Section 12, 1889 Mont. Const., which provided that "No appropriation of public moneys shall be made for a longer term than two years." The court said:

We agree with Grossman that the intention of the constitutional framers was that each legislative assembly should appropriate only for the next budget period and that such appropriations should not exceed anticipated revenue for such period. The reason that the framers of the 1972 Constitution did not include the clause "a longer term than two years" was because when the 1972 Constitution was first adopted it provided for annual instead of biennial sessions of the legislature. Grossman at 820.

In summation, there does not appear to be a constitutional or statutory prohibition against ending the 1987 biennium with a negative general fund balance, particularly so long as the state has the resources at its disposal for honoring any obligations created. The time frame contemplated by Article VIII, Section 9, of the Constitution is two years. The 50th Legislature may take actions resulting in a positive general fund balance by June 30, 1989, but it will be required to honor any valid obligations existing at the time it convenes.

