

353.978

1903

Jan 1977

STATE DOCUMENTS

Glm  
C-2

# MESSAGE

OF

## Governor Jos. K. Toole

TO THE

### *Eighth Legislative Assembly*

OF THE

### STATE OF MONTANA

---

JANUARY 5, 1903

---

STATE PUBLISHING CO.  
Legislative Stationers, Printers and Binders  
Helena, Montana

1903



Montana State Library



3 0864 1004 1675 2

# MESSAGE

OF

## Governor Jos. K. Toole

TO THE

### *Eighth Legislative Assembly*

OF THE

### STATE OF MONTANA

---

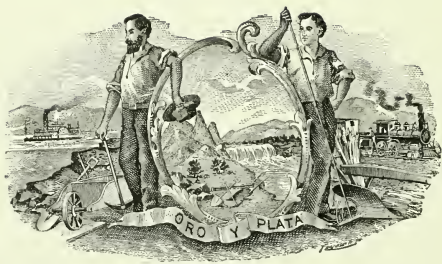
JANUARY 5, 1903

---

STATE PUBLISHING CO.  
Legislative Stationers, Printers and Binders  
Helena, Montana

1903





# Governor's Message

---

State of Montana, Executive Department,  
Helena, January 5, 1903.

*To the Senate and House of Representatives of the State of Montana*

The splendid building in which you are assembled today is the result of the generous appropriation made by your predecessors. It is strangely in contrast with the ill-constructed, poorly ventilated and worse equipped places in which you and the other departments of the State have been obliged to abide and transact the public business, in all these years of the Capital's migratory existence. So far as appearance, adaptability and convenience of its various appointments are concerned, it comes up to the full expectation of the Commission, and it is hoped that it will meet with your approval. The decorations and furnishings were the best that could be bought for the money appropriated for that purpose. Indeed, the amount appropriated proved to be insufficient, as you will be hereafter advised by a detailed report of the Commission's labors, showing receipts and disbursements, accompanied by vouchers.

An elaborate history of the building, including the impressive ceremonies attending the laying of the Corner Stone and the final Dedication, will be found in the fourth Volume of the Montana Historical Society, a volume now in the hands of the printers, which will be beautifully illustrated and of exceptional value.

Obedient to the Constitution, I have the honor to advise you of the condition of the State, and make such recommendations for your consideration as seem to be proper.

It is gratifying to be able to say that the Executive Department of the State has for the past two years furnished ample evidence of the

fidelity, capacity and economy of the large number of persons charged with its administration. There have been no defalcations to mar its record—no extravagance to impoverish our treasury or impair our credit. Our population has steadily increased. Our agricultural area has been largely extended, and our possibilities for the future in this regard immeasurably enhanced by the great stimulus afforded by a system of proposed federal irrigation, of which we hope to become the beneficiaries, and by which it is thought separate homes will be created for a hundred and fifty thousand people in the northern part of this State, in the event of what is known as the St. Mary's Lake project is undertaken.

Our mining interest have suffered, to some extent, from a general depression in the principal metals which we produce, and on account of which, it is claimed, the net income for taxation for the fiscal year just closed, fell off about sixty-three per cent., as compared with the preceding year. But this great interest, nevertheless, continues to prosper beyond that of any other, with unabated confidence in still greater prosperity for the future.

The strong arm of the State reposed in the National Guard has never been employed, nor has the occasion ever arisen to call it into requisition. Its further influence to stay the destructive hand of the lawless in a State where patriotism holds such sway, is now a mooted question.

The active efforts of the State Board of Health and the vigilant activity of the Veterinary Surgeon have contributed largely in protection to the people, and their flocks and herds, against contagious and infectious diseases.

Our public school system was never more firmly entrenched in the intelligence, affection and support of the people than it is at present, while our charitable, corrective and penal institutions have been, as a rule, wisely administered.

The importance of the trust committed to your hands is paramount.

My election is two years old. During this period, official duties, which have multiplied with increasing population and material development, have circumscribed, to a large extent, my ability to visit all the State Institutions, as required by law, or to mingle with the public scattered over the vast area which comprises our State; but you come fresh from the people and are familiar with the desires and needs of those whom you represent.

If the Constitution invited or permitted special legislation, each of you would, no doubt, be ready to formulate at one and press with insistence the measures required by his particular constituents; but, happily, legislation which is not obnoxious to the fundamental law, must, as a rule, relate to the people as a whole and affect all portions of the State, thus requiring from each of you a larger and broader view of every question than that circumscribed by the limits of your several districts; making you individually and in a large measure the representatives of the whole people.

Our great State, with its growing population, its varied industries and fertile fields, its stores of natural wealth, its treasures of gold and silver, copper and iron, coal and lumber, oil and marble, flocks and herds, sufficient in quantity to supply the demands of a continent, should exact from you such wise adjustment and extension of existing laws as will meet the legitimate requirements of our growing and changing conditions.

The Constitution is the chart by which you will be guided in your work, while every effort at legislation will necessitate recurrence to the great body of existing statutes. Upon these the rights, duties, property and privileges of the citizen depends.

You are to uphold the arm of Justice, and in all contentions and struggles incident to individual and corporate effort stand for that quality of fair play which injures none and is helpful to all.

Your honorable bodies being a coordinate branch of the State Government, your official work is entitled to the respectful, as well as the discriminating, judgment of your constituencies.

It is an unhealthy condition in the body politic which invites fatuous and unwarranted criticism and condemnation of any department of the State Government. Respect for and obedience to law depend very much upon the respect for those who make and administer it. The correctness of your motives and actions should command, as I am sure it will, the trustful confidence of those who called you to represent them. The individual or corporation that seeks to obtain from you dishonest advantage over his neighbor or competitor, or to bring gain to himself at the expense of the state, as well as the briber and lobbyist, if they shall enter here, should be driven from your halls as the common enemy of the people.

**FINANCIAL STATEMENT.**

Balance unexpended December 31, 1902:

Permanent School fund.....	\$172,067	63
School Income fund .....	153,217	37
University bond fund .....	24,810	64
Permanent University fund.....	24,347	25
Normal School bond fund.....	57,332	90
Agricultural College bond fund.....	1,970	76
Deaf and Dumb Asylum interest and sinking fund.....	4,240	48
School of Mines building fund.....	812	21
School of Mines building, interest and sinking fund.....	8,003	59
General fund .....	48,263	40
Stock Inspector and Detective fund.....	41,513	95
Stock Indemnity fund.....	8,048	54
Sheep Inspector and Indemnity fund.....	12,464	39
Fish and Game fund.....	15,644	99
University Library fund.....	1,748	89
State Law Library fund.....	98	58
Medical Board fund.....	1	78
State Examiner's fund.....	2,000	00
Escheated Estates .....	5,865	64
Soldiers' Home, United States aid.....	3,692	66
Beautifying State Capitol Grounds fund.....	356	95
Agricultural College Income fund.....	9,983	13
Permanent Agricultural College fund.....	3,632	80
University Building fund.....	16,579	92

---

Total balance unexpended December 31, 1902.....\$616,698 45

Stock Bounty Fund, cash on hand.....	\$110,898	13
Warrants drawn this date.....	\$110,898	13

Permanent School Fund—investment account:

Bonds .....	\$312,138	00
Warrants .....	43,885	00
Cash as per report.....	172,067	63

---

Total .....

---

\$528,090 63



## Permanent University Fund—investment account:

Bonds .....	\$45,000 00
Cash as per report.....	24,347 25
	<hr/>
Total .....	\$69,347 25

## Reform School Building Fund:

Warrants drawn .....	\$5,064 14
Cash on hand.....	3,851 94
	<hr/>
Balance warrants outstanding.....	\$1,212 20

## Capitol Building Fund:

Warrants drawn .....	\$37 25
Cash on hand .....	34 47
	<hr/>
Balance warrants outstanding .....	\$2 78

## Capitol Building Interest and Sinking Fund:

Warrants drawn .....	\$52,670 72
Cash on hand.....	4,623 79
	<hr/>
Balance warrants outstanding .....	\$48,046 93

**LOUISIANA PURCHASE EXPOSITION.**

The object and scope of the Louisiana Purchase Exposition to be held at St. Louis, Missouri, from May 1, 1904, to November 30th, 1904, is well known.

Some months ago, when it was supposed that the Exposition would open in May of the present year, and known that to wait for the assembling of the present Legislature to obtain an appropriation would defer action until it would be too late to collect and install an exhibit, I appointed, upon the urgent request of the press of the State and the personal solicitation of many citizens, an Honorary Commission, consisting of thirty-one members, representing every county in the State, to formulate a plan for raising funds to represent Montana at the Exposition. Their report has not yet been made, but suffice it to say, that in view of the postponement, which was soon thereafter announced, nothing was done more than to ascertain that if called upon

there would be a generous response by the people from every county in the State. The wonderful efforts being put forth by the city of St. Louis and the people of the State of Missouri to make this event the chiefest glory in their history is appreciated by this young commonwealth, which was not only an important part of the Louisiana Purchase, but at one time a part of the Territory of Missouri.

It is proper, therefore, that our State should, by appropriate legislation, provide the means by which we may help to "commemorate in a befitting manner so important an event in the history of our Common Country and in the life of the Constitutional Government as the Louisiana Purchase."

While it is expected that State pride will be an incentive to a generous appropriation, it is hoped that it will not take the form of extravagance. In view of our past experience, it is better that a wise conservatism should prevail.

In my opinion, thirty-five thousand dollars, properly expended, would be a liberal appropriation, considering the demands upon the treasury, which the estimates hereafter to be furnished you will show; twenty-five thousand of this sum to be available in 1903, and ten thousand in 1904.

I shall have the honor to lay before you in a special communication hereafter a comprehensive letter upon this subject from Hon. David R. Francis, President of the Exposition; also a report of the Honorary Commission heretofore appointed by me.

#### LEWIS AND CLARKE CENTENNIAL.

On November 12, 1902, I received a letter from Hon. H. W. Corbett, President of the Lewis and Clarke Centennial and American and Pacific Exposition and Oriental Fair, to be held at Portland, Oregon, in 1905, in which he says:

"No such important event is likely to again occur, which will be regarded by coming generations as so far reaching in its results as the exploration and settlement of the Oregon country, following upon this, the acquisition of California and Alaska, and more recently the Sandwich Islands and the Philippine Archipelago, all to a great extent the outgrowth of the settlement of the Oregon country. In this settlement by the people of your State, together with our own and adjoining

sister States, our pioneers have been the chief actors, the bulwark of its defense and settlement. With hallowed remembrances of the past and looking forward to the blessings conferred in the settlement of this favored land, we ask of you and the Legislature of Montana such recommendation and appropriation to be expended by your Commission at the Centennial to be held at that time, as shall set forth the great resources and advancement in civilization of your noble State, and at the same time joining with us in erecting a permanent monument to the memory of Lewis and Clarke. Portland has subscribed over \$350,000. We expect to add to this through transportation companies \$80,000 more, and we will ask from the State (which we expect to get) \$500,000, and from Congress a liberal appropriation."

When this matter was first called to my attention I appointed Hon. Samuel T. Hauser, of Lewis and Clarke county, a Commissioner to attend the preliminary meeting at Portland, November 5, 1901, at which steps were taken to inaugurate the celebration referred to. No report having been made to this office by the Commissioner so appointed, I am unable to advise you what part Montana took at such meeting.

I am in entire sympathy with the object and purpose of the Exposition, and would be pleased to see this State, through an exhibition of its resources and a liberal attendance of its citizens, contribute to the success of the enterprise, and for this purpose recommend an appropriation not exceeding two thousand dollars, to be expended in such a manner as you may direct.

It is believed that the exhibit which it is proposed to install at St. Louis in 1904, or a considerable part of it, might be available for this purpose, in which event, it seems to me, that two thousand dollars would be ample to install and protect the same.

#### **OLD FURNITURE AND OTHER PROPERTY BELONGING TO THE STATE.**

Considerable old furniture, consisting of desks, chairs and other personal property, formerly used in furnishing rooms for the Legislative Assembly and State Offices, is now stored in the State Armory in this city, and ought to be sold.

I recommend that authority be given the Secretary of State to dispose of the same at public auction, and turn the proceeds over to the State Treasurer to the credit of the General Fund.

### INSURANCE OF STATE CAPITOL.

Under the law the Secretary of State is Superintendent of the State Capitol. In his biennial report he asks that the Legislature consider the expediency of placing insurance on the building.

We are carrying no insurance, and have carried none since the completion of the Capitol. So far as public records are concerned, which are kept in the vaults, I have every assurance that they are perfectly safe from fire. Although the building was designed to be fire proof, and perhaps is as nearly so as is generally the case, the propriety of insuring the same and the furniture and fixtures therein, is submitted for your consideration, and if you deem it advisable an appropriation is asked therefor.

### TORREN'S LAND TITLE SYSTEM.

House Joint Resolution No. 6, approved March 9, 1901, authorizing the Governor to appoint a Commission of five within thirty days thereafter, with power to examine and report upon the feasibility and advisability of adopting the system of land transfers known as the "Torren's System," as embodied in House Bill No. 44 of the Sixth Legislative Assembly, introduced by Hedges, and in Senate Bill No. 27 of the same session, introduced by Anderson, has been complied with by me.

In obedience to the same, I appointed as such Commission, Hon. W. W. Dixon, Silver Bow County; Hon. B. P. Carpenter, Lewis and Clarke County; Hon. W. G. Downing, Cascade County; Hon. Wyllis Hedges, Fergus County; Hon. W. H. Trippett, Deer Lodge County.

The first two members of the Commission declined to accept the appointment, and I was unable to fill vacancies occasioned thereby. I have no information as to the action of the majority of the Commission. The Joint Resolution authorizing the Commission directs it to report directly to the present Legislative Assembly.

### STATE LANDS.

A comprehensive report of this department, to be found in the reports of the Register, State Land Agent and Board of State Land Commissioners, printed and published under one cover, shows the mag-

nitude and value of our grants from the United States, what disposition is being made of them, and the present and prospective policy of the State Board in dealing with the subject.

The business of the department has grown to immense proportions and the vigilance, fidelity and activity of those charged with its administration are more strongly attested by the records of their respective offices, than testimonial which mere words can supply.

Under the law, as it now exists, lands may be sold for cash or on credit. In the latter case, 30 per cent. of the purchase price must be paid down, and the balance in seven equal annual payments with interest at 7 per cent. per annum. In view of the great difficulty found in investing the funds arising from such sale, I recommend that the law be amended so as to make the unpaid balance due and payable in fourteen annual payments with interest at 5 per cent. per annum.

Such a course, I am sure, will facilitate the sale of such of our lands as it is desirable to sell, and which are now in unfavorable competition with railroad lands, and at the same time yield us good, if not better, investments for the money than can be otherwise obtained.

### ARID LAND GRANT COMMISSION.

While I am a believer in irrigation as a necessary means of general and permanent prosperity in this State, I doubt very much the propriety of committing the State to the policy of perpetual ditch tender and mender for its inhabitants on irrigated areas.

The work of the Commission, in my opinion, has not justified its creation. This is not due to any lack of ability, energy, fidelity or enthusiasm of those comprising its members, but to a financial policy which the law of its creation inflicts.

Everything it has done has been done under great disadvantages, entailing an expense upon the land reclaimed far in excess of that which would have been necessary if the Commission had been supplied with money with which to operate. If the commission is to continue in existence, a proposition of doubtful expediency and one worthy of your most careful consideration, it would be well to investigate the plan proposed by Mr. Ray, Assistant State Examiner, in his supple-

mentary report on the Arid Land Grant Commission, a plan which I am not prepared at this time to endorse, but one which shows much care and thought in its preparation.

### INVESTMENT OF PUBLIC MONEYS.

It will be seen from the reports of the State Treasurer and the Register of Public Lands, that a large amount of public moneys are lying idle to the great loss of the State.

The Seventh Legislative Assembly undertook to provide for the investment of these moneys, but the law has not been of any practical value. It provided, in effect, that the State should have the preferential right to purchase any bonds issued by any county, city or school district in this State at their par value. It further provided that all bonds purchased should bear not less than 5 per cent. interest per annum.

The result was that whenever a 5 per cent. bond was put on the market it almost always commanded a premium. So that in every such case, rather than force a county or other legal subdivision of the State to sell its bonds at a disadvantage, the State uniformly waived its preferential right to purchase. The large and continually increasing fund arising from the sale and rental of State lands makes it imperative that some investment should be found for them. In order to do this the State should be put on an equality with other investors by which it can pay more or less than par, according to the rate of interest which the bond draws, and in proportion to its intrinsic value. The power to purchase should be given to the Board of Land Commissioners, and the Treasurer required upon the order of the Board, to pay for, receive and hold any security so purchased.

### CLASSIFICATION OF COUNTIES.

If the present system of classification of counties for the purpose of fixing salaries of county officers is to continue, I suggest that there be a revision of the entire schedule of salaries.

In my opinion, they should be reduced to such an extent as to make them approximately commensurate with the services to be performed, a condition which does not obtain in the present schedule. The classification as now provided is based entirely on the assessable valuation

of property, a method which, in some instances, has tempted county boards of equalization to reduce the entire assessment roll below the actual value of the property, rather than submit to the increase of salaries as well as the number of deputies to which certain officers are entitled by reason of the property valuation of the several counties.

### CONSOLIDATION OF COUNTY OFFICERS.

There does not appear to be any satisfactory reason why the taxpayers of counties of sparse population, small assessable valuation and comparatively little business should be obliged to sustain a full complement of county officers, when a less number would subserve the public interest quite as well.

The following is a table showing the total assessment of the several counties for 1902:

Beaverhead .....	\$ 4,879,059
Broadwater .....	2,363,420
Carbon .....	3,260,464
Cascade .....	15,626,504
Choteau .....	9,455,675
Custer .....	5,835,976
Dawson .....	3,972,845
Deer Lodge .....	7,575,432
Fergus .....	6,632,831
Flathead .....	7,316,893
Gallatin .....	7,837,746
Granite .....	2,360,369
Jefferson .....	4,242,783
Lewis and Clarke .....	17,141,462
Madison .....	5,138,323
Meagher .....	3,687,770
Missoula .....	10,368,929
Park .....	4,897,603
Powell .....	3,336,869
Ravalli .....	3,641,950
Rosebud .....	4,050,130
Silver Bow .....	32,560,000
Sweet Grass .....	3,334,859
Teton .....	4,295,990
Valley .....	4,434,552
Yellowstone .....	7,480,218
Total .....	\$185,725,657

In my opinion there ought to be a consolidation of certain offices in counties whose assessable valuation does not exceed five million dollars. Sheriff and Assessor might well be consolidated; likewise District and County Clerk, without impairing the public service. Of course, the salaries should be readjusted. This system once prevailed in this State; there is no reason why it should not obtain now.

You will note from the foregoing table that fifteen counties would be included in the scheme of reduction. It would not, of course, affect officers elected at the last general election, but would apply to future elections only.

### COUNTY APPRAISERS.

Section 3698 of the Political Code, as amended in 1897, provides for the appointment of Appraisers to fix the valuation of real estate for the purpose of assessment by the Assessor in counties having an assessed valuation of eight million dollars or over.

In my opinion, this method is an unnecessarily expensive one with no corresponding benefit. The Assessor, if competent, can do this work as well or better than such Appraisers, and if he fails, the County Board of Equalization can make the necessary corrections. The expenses of this Board in the three counties of the State where it applies, were as follows for 1902:

Silver Bow .....	\$1,136 00
Cascade .....	1,320 00
Lewis and Clarke.....	2,152 75

I recommend the repeal of this statute and a return to the method which obtains in other counties.

### DISTRICT JUDGE IN LEWIS AND CLARKE COUNTY.

The law providing for a second District Judge in Lewis and Clarke County ought to be repealed. It entails an unnecessary expense of \$3,500 a year on the State, and quite as much if not more on the county. One Judge can well do the work now done by two. Cascade County is doing practically as much with one Judge as Lewis and Clarke with two.



### ELECTION OF JUDGES.

I have long been of the opinion that the election of judicial officers should be removed as far as possible from the influence of politics. Indeed, I am satisfied that the consensus of opinion of the bar of the United States is in favor of any method which will accomplish this result.

It is believed that this could be done by requiring Justices of the Supreme Court and Judges of the District Courts to be elected at a time other than a general election.

This idea has taken definite shape and form in a bill which has fallen into my hands and which is designed to be introduced at the forthcoming session of the Legislature of the State of Washington to amend the Constitution. Among its salient provisions are the following:

“Until otherwise provided by law the judicial election shall be conducted throughout as are the general elections, save as modifications are made herein. The ballot cast thereat shall bear the heading, ‘Judicial Ticket,’ and shall have upon it no party name, symbol or designation. Any person eligible to the office of Judge of the Supreme Court may become a candidate for that position, and shall be entitled to have his name placed upon the ballot and to be voted for at any judicial election, by filing in the office of the Secretary of State, at least sixty days before the date of election a petition that his name be placed on the ballot as a candidate for that office, signed by not less than one thousand qualified electors of the State at large: *Provided*, that any person who has knowingly received and not declined the nomination or endorsement of any party convention for the office shall not be entitled to have his name placed upon the ballot as a candidate therefor, nor shall any votes cast for him be counted or considered.”

Similar provision is made for the election of District Judges, and the details for carrying out the election appear to be amply provided for.

Outside of the matter of expense which such an election would entail, there does not appear to be any objection to it. I recommend this subject to your most earnest consideration.

### TRANSPORTATION OF PRISONERS.

There is nothing in the law to indicate that it was the intention of the Legislature to make the transportation of prisoners from county

jails to the penitentiary a charge against the State any more than a charge against the several counties.

The Legislature has uniformly omitted to embrace any such item in its biennial appropriation, and yet it uniformly allows such claims after the State Board of Examiners has disallowed them for want of an appropriation with which to pay them.

If you think it proper for the State instead of the several counties from which prisoners are sentenced to pay such costs, justice and fair dealing would seem to require that an appropriation therefor be made in advance, instead of compelling the Sheriffs of the entire State to carry these accounts from one session of the Legislature to another.

#### CLERKS OF BOARDS.

In lieu of the consolidation of three clerks, now doing the work of four Boards, viz.: the Board of Equalization, Pardons, Prison Commissioners and Commissioners of the Insane, as urgently asked for by one member of these Boards, I have omitted from the estimates heretofore presented and allowed the item of "Extra Clerk for State Officers," and "Extra Clerk Hire for Secretary of State," amounting in the aggregate to \$2,100.00, and I recommend that such legislation be enacted as will authorize the Secretary of State, in his discretion, upon the request of any State Officer who may require additional clerical service, to transfer any one or more of said clerks to the office of such officer, when his or their services are not required on the work of said several Boards.

I cannot refrain from commending the spirit of economy evinced in the report of the Secretary of State touching this subject, but after careful consideration the method here proposed appears to me to be more desirable and advantageous to the State than to dispense with the services of two well trained clerks who have had two years' experience in the public service, and undertake to obtain as good service from others from time to time, as extra clerical assistance may be needed.

In my opinion, the difference will be more than counterbalanced by the quality of the labor performed.

**STATE BOARD OF EQUALIZATION.**

I shall gladly join you in every reasonable effort to economize in the public expenditures. In doing this, however, it is not well to emulate the example of the "blind guides," whose habits were to "strain at a gnat and swallow a camel."

Equal and just taxation of all property in the State at its actual value is the indispensable condition upon which general contentment and prosperity rest. With the present infinite varieties of property and the mysterious forms in which wealth finds expression, the subject has become more intricate than ever; but difficult as the task may be, it is our business to obviate palpable inequalities as far as possible. The burdens of taxation are most unequally distributed now. Millions of dollars of money and property escape taxation in this State year after year.

For the purpose of illustration, I shall call your attention to a few remarkable instances.

If you will examine the records and facts, you will find that the entire property of one county in this State, including a modern smelting plant that cost not less than seven million dollars, was for the year 1902, assessed for less than it cost to construct such smelting plant alone only a year ago.

You will find that the household furniture of the entire county was assessed for \$12,950, a sum which does not represent the value of furniture in a single hotel in that county.

In the same county, where stands, perhaps, the finest smelter in the United States, the machinery for the entire county is assessed for \$517,995.00. It is believed that this does not represent one-third of the value of the machinery referred to in the smelter alone.

In 1901, Fergus County, remote from railroads and having little machinery, compared with Deer Lodge County, returned machinery of the value of \$127,785.00, while Deer Lodge County returned only \$63,375.00.

For 1902, Silver Bow returned less than three-fourths of a million dollars for machinery. Everybody conversant in the least with values knows that these values are grossly inadequate, and the inequalities in the counties named most glaring.

In Silver Bow County the value of lumber, an article used in larger

quantities than I can approximate, is placed at only \$1,345.00. It will not do to say that this item was embraced under the head of "merchandise," for the whole amount of merchandise in that county was valued at only \$1,782,795.00. And while upon this subject, I may add that for 1902 less than one million dollars' worth of lumber was returned for taxation in the entire State, while the Bureau of Agriculture and Labor Report, upon information furnished by the manufacturers themselves, that the value of lumber manufactured in Montana in that year was approximately two million dollars at the mills.

Franchises are assessed in only seven counties in the State, to-wit: Carbon, Cascade, Lewis and Clarke, Missoula, Park, and Silver Bow.

The total amount returned is \$434,095.00. Of this amount Lewis and Clarke returns \$264,595.00. Comment is unnecessary.

Express, Electric Light and Water Companies are grouped together, and for the purpose of taxation are returned for the last year at \$1,617,210.00 for the entire State. Of this amount, Lewis and Clarke County alone returns \$373,870.00, or about one-fourth of the whole amount. I mention this to show both inadequacy and inequality of value.

Your attention is called to the fact that under Section 3691 of the Political Code, "the stockholders in every bank or banking association organized under the authority of this State or the United States must be assessed and taxed on the value of their shares of stock therein."

From reliable information it appears that the stock of National and State banks in this State amount to \$4,347,870.00; and yet we find only \$2,740,026.00 of the bank stock returned for assessment, only about one-half of the capitalization of stock, not one dollar of which could be bought on the market for less than par.

According to the United States Bank Register the capital stock, undivided profits and deposits for 1902, amount to \$36,543,290.00, while the amount and value of the same as returned for assessment for the same period was \$6,514,980.00.

#### A NOTABLE CASE.

In one county in this State a bank returned stock valued at \$139,000.00, and the Assessor voluntarily reduced it \$129,000.00, returning only \$10,000.00. This seems incomprehensible.

Thousands of acres of valuable timber and grazing lands, upon which Script has been laid and for which certificates of purchase have been issued by the United States, are uniformly escaping taxation, notwithstanding our statute expressly provides for the taxation of this possessory right as well as the "timber belonging to individuals or corporations, growing or being on the lands of the United States, and all rights and privileges appertaining thereto."

It is sought to avoid taxation upon such property, because legal title to such property is held by the United States until patents are issued. Such a position it is believed is untenable. The individual or corporation has paid for the land. Nothing more remains for him or it to do. The individual or corporation, as the case may be, is entitled to the exclusive possession of the land upon which the script is laid. He may denude it of its timber, which, in most cases, is the only thing that gives value to the land, long before the patent is ever issued. Millions of feet of timber sold from the State lands to large companies and corporations have been cut and manufactured into lumber and railroad ties and no return ever made for assessment.

A representative of one of the railroads who appeared before the Board of Equalization in 1902, declared that only 44 per cent. of the live stock of the State, as shown by the Federal Census, was returned that year for assessment and taxation, but I am convinced that this claim was overstated.

It is believed that the only safe way by which some of these derelictions of duty resulting in grossly inadequate valuations and shameful inequalities can be corrected and the spirit of the law enforced is by an amendment to the Constitution enlarging the powers of the State Board of Equalization, so that it can equalize in fact, at least, certain classes of property.

Aside from the great injustice to the cities and counties, it works great hardship upon the State whose levy is fixed by the Constitution. This subject was briefly considered in my Message to the Seventh Legislative Assembly.

What was then said is here repeated:

"Under a decision of the Supreme Court of this State interpreting the Constitution and laws relating to the State Board of Equalization, the powers of this Board have been so limited and curtailed as practically to make it merely an instrument for the assessment of railroad property."

Until this decision was rendered it certainly was the opinion of the Executive Department of the State, uniformly expressed and followed since the adoption of the Constitution, that the power to equalize carried with it the right to increase or decrease the aggregate value of specific classes of property, and therefore the total value of all property, views of which can no longer obtain, it is believed, without a constitutional amendment.

If the State Board of Equalization is thus shorn of its useful powers, it will be only a short time when the raising of revenues for the State will be made to depend upon the moral instead of the legal duty of those intrusted with making county appraisements and county levies, a method too fickle and unstable to meet the requirements of taxation.

It must be remembered that under the Constitution the maximum levy is two and a half mills for State purposes, while there is no limit upon the levy for county purposes. Under such conditions it does not require great discernment or forethought to see how, by the manipulation of county assessments and levies by local authorities, the State revenues may be not only materially decreased, but practically destroyed.

Touching this proposition I quote with approval the following paragraph from the annual report of the Board of Equalization for 1898:

“With the limited levy of two and one-half mills for State purposes and an unlimited levy for county purposes, it can be readily seen that if the State Board is not given the power to increase or decrease to the limit of uniformity in taxation and just valuation that year by year the valuation of property, more particularly in the large counties, will decrease, thereby depriving the State of its just revenue, and compelling the other and less prosperous counties to pay the State more revenue upon the same class and kind of property than their more prosperous neighbors.”

The Board, under the Constitution and laws, has full and adequate power to assess railroad property. It is gradually reaching public expectation in that behalf. Two years ago it made a new departure in assessing railroad franchises. It was almost nominal, but it was a beginning. Last year it raised the assessment on railroads, road-bed, right-of-way, rolling stock, equipment, etc., from \$15,485,670.17 to \$32,036,565.00.

This was a very substantial and gratifying increase.

The Board first assessed them for a much larger sum and notified their representatives as required by law, who applied at once to have the same corrected under Section 3741 of the Political Code, which reads as follows:

Section 3741. "If the owner of a railroad assessed by the State Board of Equalization is dissatisfied with the assessment made by the Board, such owner may, at the meeting of the Board, under the provision of Section 3801, between the third Monday in July and the second Monday in August, apply to the Board to have the same corrected in any particular, and the Board may correct and increase or lower the assessment made by it, so as to equalize the same with the assessment of other property in the State."

In view of the fact that much other property in the State was, in the judgment of the Board, either not assessed at all, or assessed too low, it was deemed proper to reduce the assessment first made, "so as to equalize the same with the assessment of other property in the State."

I therefore recommend a constitutional amendment giving this Board plenary power so to adjust and equalize assessments that all taxable property in the State will be assessed at uniform rates and at its full value in money, without reference to an increase or decrease of the aggregate value of the same as returned by the Assessors.

### **CONSOLIDATION OF EDUCATIONAL INSTITUTIONS.**

Under the authority conferred by the House Joint Resolution No. 7, passed by the Seventh Legislative Assembly, the State Board of Education carefully considered the advisability of a consolidation of the several educational institutions of the State, and by unanimous vote of those present at its last annual meeting in December, 1902, declared that it was not feasible to attempt a consolidation, all of which will appear in the report of the State Board to be hereafter transmitted.

It is believed that the further agitation of this question at this time can accomplish no good, but will be altogether harmful to the State and detrimental to the cause of higher education.

### **STATE BOARD OF CHARITIES.**

The several penal, reformatory and charitable institutions of the State have had careful, conscientious and intelligent inspection and

examination of the State Board of Charities, the personnel of which is representative of the best moral element in our midst. Their report, which will be hereafter submitted, is clear and concise, and is replete with valuable information and suggestions touching these institutions.

Among other things, the Board recommends the appointment of a Chaplain at the State Penitentiary. Every one must admit that this institution affords a most inviting field for such an addition to its administrative force, and in view of the fact that our Constitution provides that all laws for the punishment of crime shall be founded on the principles of reformation as well as prevention, the recommendation seems altogether reasonable.

I also concur in the recommendation for the erection of a building for the female prisoners at a cost not exceeding three thousand dollars.

### INSPECTION OF MINES.

A valuable discussion of mines and mining, and incidentally a review of the futility of the late Mining Congress held at Butte City last September, find places in the Fourteenth Annual Report of the Inspector of Mines.

The number and causes of accidents in mines, in the opinion of this officer, are far in the excess of what they should be if the law was more comprehensive. These defects are pointed out and appropriate amendments suggested. Considering the extra hazardous employment of those engaged in *underground mining*, the dictates of common prudence, as well as the demands of humanity, require that every reasonable precaution should be taken by the Legislative authority to provide against unnecessary accidents and injuries to those engaged in mining.

The following extract from the report of the Mine Inspector will show how deeply that officer feels the failure of the law to properly uphold his hands and give to his labor the efficiency which the purpose and spirit of the law intended:

“The conduct of the Legislative Assembly towards this department since its creation, has been of a distrustful character. . . Whenever a question of amending the laws relating to this department, vesting it with authority more direct and positive, has been suggested, it has been invariably frowned down, on the ground of bad public policy by reason



of the exaction which could be imposed on the mining interests by the officials intrusted with the duty of enforcing such laws.

"The agents of some of the large mining corporations have from time to time effectively used the argument when opposing legislation designed to afford a larger measure of protection to the miner, that legislation which conferred on this department the authority to enforce at once all orders relative to making safer conditions and stopping dangerous practices, carried with it a license to abuse the authority by the officials charged with its execution.

"That the determination of a question involving human life should be influenced by arguments of so shallow and groundless a character is beyond comprehension, and considering the nature of the relation between this or any appointive officer and the State and its Chief Executive, is absurd. Is it not a fact that each and every appointive officer may be called upon by the Governor, at any time, to explain his official conduct in any matter where he has failed to perform his duty or has abused the authority vested in him?

"It would appear that immunity from stricter regulations based on such pleas should have no further force or effect with the General Assembly, and it is earnestly trusted that the Eighth Session of the Legislative Assembly will in their deliberations give to the subject of mine accidents the attention which its importance demands."

### INSPECTOR OF COAL MINES.

The office of Coal Mine Inspector was created at the last session of the Legislature, and Howard F. Welsh was appointed Inspector. His annual report was unavoidably delayed, so that it did not reach me in time for thorough examination and consideration. It includes a brief report upon the various coal fields in this State, the number and causes of accidents, various tables of interest, and a valuable map, showing the coal area, etc., etc.

### BUREAU OF AGRICULTURE AND LABOR.

This arm of public service continues to grow in usefulness and value. The authentic information concerning the industrial interests of the State which it collects and disseminates in attractive form, is productive of the best possible results.

A large increase in our population of a very desirable class of citizens can be readily traced, in a large measure, to the intelligent efforts put forth by this office. The forthcoming report will be found to be unusually attractive and worthy of a wide circulation among home-seekers.

The expense of editing a former edition of this report, in reality a work of great value, by O. M. Holmes, amounting to two hundred and fifty dollars, was disallowed by the State Board of Examiners, because we found no authority of law for such allowance. An item of \$800.00, incident to the distribution of the same, was likewise disallowed upon technical and not meritorious grounds.

There was ample money in the appropriation to pay both of these claims, but it seemed the part of prudence by a majority of the Board to present them to your honorable body for action, which will be done hereafter, with my recommendation that they be paid.

#### **BOILER INSPECTOR.**

The work of this office continues to be a source of great satisfaction to the Executive Department.

Every year vindicates the wisdom of the Legislature in creating the office, and reflects continued credit upon its management.

Not an explosion of a boiler or steam connection coming under the operation of the law or jurisdiction of the Boiler Inspector occurred in the State for the years 1901 and 1902, although official statistics show that during the same period in other parts of the United States, there were 423 boiler explosions in which 312 persons were killed and 646 were injured, making a total of 958 persons killed and injured.

For the past two years the excess of receipts in that office over expenditures has been \$3,348.80.

#### **STATE EXAMINER.**

The office of State Examiner has been one of great usefulness, indeed, almost indispensable to the Executive in keeping in touch with public officials and State Banks, a knowledge of whose accounts and methods of transacting business it is necessary to possess.

During the year the State Examiner has made personal examinations of the office of seven State officials, twenty-six county officers, twenty-

four banks and trust companies and two building and loan associations, as well as a detailed examination of an report on the Arid Land Grant Commission.

The work of the office has grown to such proportions that the allowance for traveling expenses must be increased. It is noteworthy that not an officer or bank in the state, coming under the jurisdiction of the Examiner, has been the means of losing a dollar to the public during the two years last past.

I concur generally in the recommendations of the Examiner, made in his biennial report.

### PARDONS.

For the fiscal year ending December 30, 1902, seven prisoners serving terms in the penitentiary and one person serving a term in jail were pardoned.

Two diminutions of sentences were granted and two fines remitted.

There are numerous cases among the sick and afflicted convicts whose conditions appeal strongly to Executive clemency, but in view of the fact that they are without money or ability to secure medical treatment, and would probably become public charges in a very short time, it is by no means certain that it would be the exercise of wisdom or charity to grant pardons in their cases.

I think it would be prudent to make an appropriation of five hundred dollars, such sum, or so much thereof as may be necessary, to be expended in the next two years under the direction of the Board of Pardons, for the transportation of such persons as I have indicated, to their friends or families outside of the State, when deemed advisable to pardon them.

### FARMERS' INSTITUTE.

I doubt very much whether any money appropriated by the last Legislature has brought better returns than that appropriated for the purpose of holding Farmers' Institutes for the instruction of the citizens of this State in the various branches of agriculture.

The law contemplates the holding of at least one Institute in each county each year. This has been found impracticable, so far, but will be provided for in the future. A new impetus has been given to farm-

ing in Montana by the proposed Federal irrigation system, which, if put in operation in this State, will add more than a hundred thousand farms to our irrigable area.

I quote with approval the following extract from the First Annual Report of the "Farmers' Institute"—see page 7:

"The wealth which nature has stored up in the rich soil of Montana cannot be estimated. It is now called the Treasure State, on account of the value of its minerals, but the time will come when the hay, grain, fruits and vegetables from the farms will be worth tenfold more than the gold, silver and copper from the mines. A few years ago Colorado was only a mining State. It is still the chief producer of the precious minerals, but the value of its soil products now far surpass those of the mines. The same change is taking place in this State. For the next fifty years our mineral output is likely to increase, but the rate of increase will be small in comparison with the products from the farms."

Some idea of the value of these Institutes can be had by a careful review of the elaborate report of the Board of Administration, prepared and edited by Professor S. Fortier, Secretary.

### NATIONAL GUARD.

The return of the Montana regiment from service in the Philippines found our equipments practically worn out, and the guard considerably depleted and demoralized as an organization.

The work of reorganization was taken up by the present Adjutant General under many difficulties, but with final success. Seven companies properly officered and 412 enlisted men now comprise the National Guard.

The appropriation made two years ago was inadequate for any purpose. There was scarcely anything left after paying necessary expenses of inspection, freight charges, etc., to apply on company rent accounts.

Last year we drew from the United States 300 Krag Jorgenson rifles and 5,000 rounds of ammunition, together with other necessary supplies of the value of about \$13,500, which leaves the Guard well equipped, so far as arms, blankets and clothing are concerned.

The Adjutant General makes numerous suggestions for increasing the efficiency of this branch of the public service, which will be found in his Annual Report.

**GAME AND FISH.**

The only legislation which we ever had in the State that afforded reasonable protection to the game and fish was passed by the Seventh Legislative Assembly. It created the office of Game Warden, and gave that officer authority to appoint not less than five nor more than seven deputies at a salary of \$100 per month.

The law has been reasonably well enforced, considering the extent of country which has to be covered by this limited number of deputies.

It is said in the last report of the Game Warden that since the creation of his office, "more arrests and successful prosecutions of game violations have been made than in the whole previous history of the Territory and State," and the claim is made that large game has been more plentiful this season than for the past ten years, a fact due in a great measure to the vigilance of that officer and his deputies.

Many of our streams are being restocked by the government hatchery at Bozeman, and in some instances black bass and yellow perch have been introduced successfully.

The malefactor most sought and least caught is what the Warden denominates the "dynamiter," an individual who uses giant powder, and thus kills indiscriminately large and small fish.

It is believed that the law does not make adequate provision against dumping coal dust and screenings into our streams. My information is that the damage on this account is greatest in the Yellowstone river. It is believed that if this offense was reduced from a felony to a misdemeanor the chances of conviction would be largely increased.

The amount collected from non-resident licenses and sale of certain articles .....	\$ 5,353 20
Amount received from tax levy.....	15,518 92
	<hr/>
Total .....	\$20,872 12
Expenditures for two years in administering the law.....	19,583 32
	<hr/>
Balance in the Treasury Nov. 30, 1902.....	\$ 1,288 80

**STATE INSTITUTIONS.**

The various educational institutions of the State have made a most satisfactory showing since you last visited and examined them. They

are doing splendid work and hold high rank among similar institutions in the United States. They are entitled to all the encouragement which a liberal appropriation can give.

The rapidity with which the insane and criminal classes continue to increase is startling. They continue to be the chief expense in the maintenance of the government. At the close of the fiscal year, November 30, 1902, there were 520 inmates in the asylum at Warm Springs, and 472 prisoners in the penitentiary at Deer Lodge.

The insane are kept under contract with Mitchell & Mussigbrod at 65 cents per capita per day at Warm Springs, Montana, and the convicts at 45 cents per capita per day, under contract with Conley & McTague, at Deer Lodge. The accommodations furnished are good and the prices charged are reasonable. These contracts expire respectively April 6 and June 16, 1904.

Special attention is called to the Historical and Miscellaneous Department of the Montana State Library, now installed in the State Capitol building, and under the immediate charge of Mrs. Laura E. Howey, secretary and librarian.

For the first time since its organization this splendid institution is of easy access and is beginning to meet the just expectations of its founders and promoters.

The recommendations made by the Board of Trustees are not unreasonable and are entitled to your favorable consideration.

#### **MAINTENANCE FUND FOR THE LAW LIBRARY.**

Section 2389 of the Political Code devotes all of the fees collected and paid into the State Treasury by the Secretary of State, and twenty per cent. of the fees of the Clerk of the Supreme Court to the maintenance fund of the Law Library Department of the State Library. The law has never been observed, to my knowledge, and is practically a dead letter, but inasmuch as these fees amounted, in 1902, to over \$23,000, prudence demands that the law should be so amended as to authorize this item to be credited to the general fund. It is not claimed that this amount of money is necessary for the maintenance of the Library, but as suggested by the Chief Justice in his report on that institution, "These provisions should be either observed or the Legislature should abrogate them altogether."

Your attention is invited to the recommendations of the President of the State Law Library, in lieu of the section above referred to, and found in his biennial report for 1902.

They meet my approval.

#### **PERSONAL PROPERTY NOT SECURED BY REAL ESTATE.**

Attention is called to the fact that the present law authorizing the Assessor to collect personal property taxes not secured by real estate is unconstitutional. It has been so decided by the District Court of this district, and the decision is, doubtless, sound and conclusive. The Treasurer has no authority under the law, as it now stands, to enforce payment of these taxes until after they become delinquent.

This is a species of tax which requires much vigilance in its collection. The law should be so amended as to authorize the Treasurer to collect the same upon the receipt of the necessary information regarding the same, which it should be the duty of the Assessor to furnish.

#### **BONDS FOR THE SAFE KEEPING OF FUNDS COLLECTED BY THE COUNTY TREASURER.**

Section 4367 of the Political Code is defective.

It was manifestly intended to require the County Treasurer, in the event he deposited public funds with the State or National Banks, to exact bonds to secure him and the public against loss or diversion of the same. Reference to the section will show that it applies only to that part of his collections belonging to the State.

It should be amended so as to apply to all moneys coming into his hands as such County Treasurer.

#### **BOUNTIES ON WILD ANIMALS.**

I am satisfied that the bounty law is being abused, and that the State, in many cases, is imposed upon by fraudulent claims.

It is quite probable that we are paying bounty for the destruction of wild animals in neighboring States. There is certainly every inducement for the unscrupulous and criminal classes to practice such a fraud and imposition.

This State, with a liberality and prodigality unprecedented, has of-

ferred bounties far beyond its immediate neighbors, thus inviting the shipment of skins and scalps into this State to harass the State Board of Examiners and deplete our bounty fund.

It has inaugurated a new "open-door policy" altogether too one-sided in its operations. There should, at least, be the semblance of reciprocity; even among "scalpers."

I am often reminded that the tax for the bounties comes out of the live stock interests of the State, and is derived from a special tax levied for that purpose, and that stockmen, as a rule, are satisfied to pay the tax.

This is not wholly true, but if it was, every temptation to abuse the law and make payment for animals not killed within the State, ought to be removed.

The first great step in that direction should be to reduce our bounty to correspond, as nearly as possible, with the bounties offered by adjoining States, or by some means induce the adjoining States to raise their bounties to correspond with ours, and thus by united efforts commence and prosecute a war of extermination.

Four hundred and fifty thousand dollars' worth of these claims have been filed with the State Board of Examiners in the past two years, and over three hundred and sixty thousand dollars of these claims have been paid during the same period.

We are just at the beginning of the year, and not a dollar of last year's taxes left with which to pay the present deficiency on that account, to say nothing of those claims which will accumulate between now and the receipt of this year's taxes in December next, a sum which will approximate \$325,000.

For 1901 and 1902, North Dakota paid in bounties \$34,888.

For the biennial period ending September 30, 1902, Wyoming paid only \$24,099.

In Utah, for 1901 and 1902, the State paid \$11,833 for bounties on wild animals, and in addition \$11,500.92, which represents one-half of the amount paid by the various counties for bounties on destruction of jack rabbits, prairie dogs, muskrats, English sparrows and other destructive birds and eggs.

In South Dakota the law limits the amount of bounties to be paid in any one year to five thousand dollars. The amount paid for the year 1901 was five thousand dollars, and for 1902, two thousand and twenty-nine dollars.



In Idaho and Washington the levy for bounties is made by the County Commissioners for the several counties, and laid upon the live stock interests of the respective counties. I have been unable to obtain the aggregate amount in the last two years.

Admitting, for the sake of argument, that stockmen, as a rule, are willing to contribute the large sum of money necessary to pay the extraordinary bounties authorized by our law, there is another class of citizens who have a right to protest, and many of whom do protest against contributing to a fund in which they do not have a common interest.

Section 3075 of the Political Code provides that 5 per cent. of the amount derived from the collection of all licenses shall be credited to the bounty fund. This is essentially wrong. It is doubly wrong, in view of the fact that such revenue is needed by the State. Instead of 25 per cent. of such licenses going to the State, as provided by Section 4050 of the Political Code, the 5 per cent. above referred to should be added, making the State's portion of such licenses 30 per cent., and both of these sections should be amended accordingly.

After careful consideration of the subject, I further recommend that the law be so amended as to reduce the bounties to, or approximately near, those of adjoining States, and that the County Commissioners of the several counties be authorized and directed to levy a special tax for the payment of the same in their respective counties, upon the stock interests, in proportion to the live stock interests therein, taking as a basis therefor, for the first year, the number killed in such county for the preceding year, as shown by the record of the State Board of Examiners, and that the several Boards of County Commissioners and the County Treasurers be charged with the administration of the law.

In my opinion, such a law will be found to be more effective and wholesome, and many of the temptations for fraud and imposition thereby removed.

If, as before suggested, the adjoining States could be induced to raise their bounties to correspond to ours, the result would be even better. Something must be done, and the situation seems to be well summed up in the closing words of the president of a benevolent society, who, when confronted with an exhausted treasury, tearfully declared: "We must have more money or less funerals." And so, if we ever expect to preserve our credit, we must have a larger tax or a smaller bounty.

### FOREIGN FRATERNAL INSURANCE COMPANIES.

I am advised by the State Auditor that there are sixty or more foreign Fraternal Associations that issue life insurance operating in the State, that do not come under the operation of his office, and are not subject to any supervision, and do not contribute any portion of the income of the insurance department of his office.

In my opinion there ought to be some supervision of such companies.

There are undoubtedly some good and some bad among them. It is due to the good companies that the bad should be eliminated, and it is due to the taxpayer that those who reap a reward in this field of labor and profit should contribute to the support of the State government.

I am not sufficiently advised to say that it would be prudent or expedient to make the same charge against the Fraternal Associations as are made against other insurance companies. Perhaps not, but all fraternal companies should be classified, and as such put under proper supervision.

A government of exemptions or exceptions is a government of inequalities, and this one quality leads inevitably to discontent and infinite trouble.

It takes just so much money to provide for our State Government, and every item of property or class of occupations that escapes taxation makes the burden on others just that much larger.

I hope you will take the matter up, and make such provision for a proper supervision of these companies as justness and fairness require.

### TEXT BOOKS AND TEXT BOOK COMMISSION.

The Seventh Legislative Assembly provided for the creation of a State Board of Text-Book Commissioners, with power to select and adopt a uniform series of text books for use in all the public schools of the State, and to make and enter into a contract for supplying the same at a stipulated price, for the period of six years from and after the first day of September, A. D. 1897, which was done accordingly.

These contracts were made with nine different companies, and expire on the first day of September next.

Bonds for the faithful performance of the contracts, in double the amount of the contract prices, aggregating \$22,900, were given and approved.

The Superintendent of Public Instruction has advised me that the contractors have habitually violated the terms of the contracts, in selling such books at a price far in advance of the stipulated price, and in failing, in many instances, to establish and maintain a place in each county for the distribution of such text books.

To what extent the State, which represents the patrons of the public schools, has been damaged, can never be definitely ascertained, but that it is a considerable sum is the opinion expressed by the Superintendent of Public Instruction.

Different views have been expressed as to the liability incurred by the sureties on the bonds.

Is the State entitled, upon showing a breach of the contract, to recover the full amount of the bonds as liquidated damages, or is it entitled only to actual damages? This is a matter which, in view of the opinions expressed, will probably have to be settled by the Judicial department. Looking to this end, I have made a demand upon the several contractors for the full amount of their respective bonds. In this connection, I am glad to say that I have discovered no disposition upon the part of any State officer to shirk his duty or embarrass the State in its effort to ascertain or maintain its rights.

Turning to the law creating the Text-Book Commissioners, we will discover that they were appointed for a special purpose, which purpose has been accomplished, and that it has no power to enter into new contracts. The result appears to be that the book concerns have induced the State to adopt certain books, which, according to Section 7 of the text book law, are required to be "to the exclusion of all others and until otherwise provided by statute." Ordinarily, it would have been quite sufficient to have required the exclusive use of such books during the term of the contracts, but to have given such exclusive privilege to these concerns until "otherwise provided by law," seems quite inconsistent with a due regard to public interests.

In order that the seriousness of the situation may be more apparent, attention is called to Section 9 of the Act supra, which provides that any school officer, teacher or trustee, who shall use, or provide for the use of in any of the public schools of the State of text books, other than those adopted by the State Board of Text-Book Commissioners, shall be deemed guilty of a misdemeanor.

From this it is evident that the book concerns whose books have

been adopted, have fastened their text books upon the State until a new commission, or rather tribunal, is created, with power to contract. The result is, that the monopoly thus created may fix its extortionate price at its own pleasure, and the public, under the pains and penalties of a criminal statute, must buy at these prices.

With the State thus tied hand and foot, it is not probable that any affirmative legislation will be asked by the book companies, but it is obvious to me, as it must be to you, that if the public interests are to be conserved, it is imperative that the present law requiring the continued use of such books must be repealed, and a provision made by which new contracts can be entered into and enforced without question.

The State is under the highest obligation to carry out such contracts to the letter. Every taxpayer contributes to the general purpose, and the beneficiaries are, in a sense, the wards of the State, and whatever they are entitled to under the law should be vigilantly looked after. They are to be our successors in the main affairs of life, so that every one who has the interests of mankind at heart must look gravely to the educational facilities afforded the children of the State.

If the court should finally decide that the State was not permitted to recover except for actual damages, our loss might be great on account of the difficulty and uncertainty, in many cases, of making proof. To obviate such embarrassment and secure to the beneficiaries a faithful performance of any contract which may be entered into hereafter, I recommend that the law be so amended that a failure to comply with the contract shall be deemed and held to be sufficient ground to recover the amount named in the bond, securing the same as fixed damages.

#### **ELECTION OF SENATORS BY THE PEOPLE.**

Two years ago the people of this State adopted a joint resolution proposing an amendment to the Constitution of the United States providing for the election of United States Senators by a direct vote of the people.

I urge the adoption of a similar joint resolution at this session, and trust that a demand so responsive to the great popular heart will continue to be agitated and pressed with renewed vigor until every obstacle now entrenched behind the ramparts of privilege and power shall be overcome, and thus disprove, in a measure, the offensive aphorism that

while all free government is democratic in theory, it is necessarily aristocratic in fact.

Governor Sayres, of Texas, in his last annual message, referring to this subject, said:

“Under present methods our representatives in the Senate of the United States are elected by a majority of the members of the Legislature. This system represents the compromise which was yielded by the champions of a popular government to those who entertained a profound distrust of the intelligence and conservatism of the people. In those early days it was thought that a Legislature, itself elected by a popular vote, would be able to exercise greater wisdom in the selection of senators than the people at large. But a comparison of the results in legislation that have attended the different methods of electing our representatives in Congress and our senators discloses no reason why we should fear the change, or why we should not abandon the old and resort to the new method, more in accord with the spirit of a government founded on the will of the people and responsive to a widespread sentiment.”

### DIRECT LEGISLATION.

I know of nothing more in accord with the genius and spirit of American institutions than what is popularly known as “Direct Legislation.” It had its birth in Switzerland. It is the very essence of government by the people.

It fosters and encourages the formation and exercise of deliberate and independent judgment upon the part of the voter, instead of a perfunctory, blind following of disloyal, dissembling and designing leaders.

It is the sure defense of the people against misrule and oppression.

It is the beacon light of safety when public servants are recreant to their trusts and defy public opinion.

It is our hope for the present, our refuge and safe anchor for the future.

It is the sure weapon with which to put to flight the briber and the lobbyist, and drive them, like Hagar, to the wilderness.

It is a guarantee against the universality with which private interests take precedence over public interests.

It has been successfully tried in South Dakota and Utah, and has been lately adopted in Oregon.

It is no longer an experiment in the United States. It exists to a greater or less degree in every State in the Union.

It is already applied in matters which we consider the highest concern of the citizen, such as the removal of State capitals and County seats; the issue of State, county and municipal bonds; the adoption of city charters, local option, municipal ownership of public utilities, etc., etc.

Manifestly the truth is, if the people are fit to delegate power, they are fit to exercise power primarily.

It is alleged, whether true or false it is not my purpose to affirm or deny, that political excesses far beyond the limit of law or morals have afflicted us while yet in the early youth of our existence as a State, and that instead of holding public officials to a strict accountability, a false charity for every frailty biennially relaxes the public morals until the very idea of public duty is almost effaced.

It cannot be said that this stigma attaches to the law-making power alone. The Executive and Judicial departments have not escaped similar criticism during this strenuous period in our history, when corporate greed and sordid wealth are testing to the last degree the metal and manhood of men. No false pride on our part should induce us to gloss over long-continued and wide-spread accusations, by merely characterizing them as malicious or mendacious. By pride the angels fell.

Whether inspired by malice or mendacity, cupidity or stupidity, or whether in it all there is a grain or more of truth, the fact remains that our proud escutcheon has been tarnished and our influence for the future more or less impaired.

To me ordinary prudence suggests and State pride demands, that no step be omitted which will tend to remove every pitfall for the weak and every weapon for the wicked. When such safe guards have been thrown around those in authority, the occupation of the briber and the lobbyist will have disappeared, and then all the inuendoes, inverasities, insinuations and suspicions which the imaginations of the malignant can invent or supply will never hurt or annoy us.

If such a change is made in our fundamental law as will permit the people at the ballot box to approve or reject certain legislation, those having private interests to serve will not infest these chambers or ob-

struct the public business. Moreover, the Legislature and the Executive will exercise more care as to the nature of the measures passed and approved if the voters have the power to demand that their voices be heard at the ballot box directly upon these measures.

I accordingly recommend the submission of a constitutional amendment, providing for Direct Legislation, in substance and form like the Oregon amendment, which is as follows:

“Section 1. The legislative authority of the State shall be vested in the Legislative Assembly, consisting of a Senate and a House of Representatives, but the people reserve to themselves power to propose laws and amendments to the constitution, and to enact or reject the same at the polls, independent of the Legislative Assembly, and also reserve power at their own option to approve or reject at the polls any act of the Legislative Assembly.

“The first power reserved by the people is the Initiative, and no more than 8 per cent. of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed.

“Initiative petitions shall be filed with the Secretary of State not less than four months before the election at which they are to be voted upon.

“The second power is the Referendum, and it may be ordered (except as to the laws necessary for the immediate preservation of the public peace, health or safety) either by petition signed by 5 per cent. of the legal voters, or by the Legislative Assembly, as other bills are enacted. Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislative Assembly which passed the bills on which the Referendum is demanded. The veto power of the Governor shall not extend to the measures referred to the people.

“All elections on measures referred to the people of the State shall be had at the biennial regular elections, except when the Legislative Assembly shall order a special election. Any measures referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon, and not otherwise.

“The style of all bills shall be: ‘Be it enacted by the people of the State of Oregon.’”

"This section shall not be construed to deprive any member of the Legislative Assembly of the right to introduce any measure.

"The whole number of votes cast for Justice of the Supreme Court at the regular election last preceding the filing of any petition for the Initiative or for the Referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petition and orders for the Initiative and Referendum shall be filed with the Secretary of State, and in submitting the same to the people he and all other officers shall be guided by the general laws and the Act submitting this amendment until legislation shall be especially provided therefor."

The foregoing amendment was adopted by the people of Oregon at the State election last June by a majority of about eight to one, the demand for this amendment having been in the platforms of both political parties in Oregon. Should the Legislature see fit to submit such an amendment to the people of Montana, I would suggest that the general appropriation bill be included among the exceptions to the Referendum portion of the amendment.

I would suggest also that our ballot law be so amended that all measures or questions referred to the people at regular elections be printed on a separate ballot.

As is readily seen, the Direct Legislation amendment adopted by the people of Oregon is unlike the Direct Legislation amendment bills hitherto introduced in this State in this important respect:

The adoption of the usual form of amendment bill would send to the ballot box a vast amount of measures and material, all of which might be beneficial and none objectionable even to five per cent. of the voters. Under the Oregon amendment, on the contrary, no measure passed by the Legislature is submitted to the people unless it is objectionable to five per cent. of the voters.

The certainty that five per cent. of our intelligent electors would petition for a Referendum upon a measure injurious to the public interests would deter corporations and others from attempting to use the Legislative body to promote private ends and pass bills contrary to the public welfare.

In addition to the States that have already adopted Direct Legislation I would call attention to a resolution adopted by the State Bar Association of Pennsylvania last July. The resolution was introduced



by an eminent member of the Bar Association, Judge White, of Indiana County, and is as follows:

“Whereas, The Referendum principle in legislation is engaging the serious attention of thoughtful public men and many Legislatures, and has been adopted by constitutional amendment in the State of Oregon by more than a two-thirds majority at the general election there, June 2 last; therefore,

“Resolved, That the Committee on Constitutional Amendment is hereby instructed to examine and report to this association at its next meeting as to the wisdom and practicability of suggesting an amendment to the Constitution of the Commonwealth, embodying the principle of the Referendum, as shall be deemed most practicable, thus having certain bills passed by the Legislature referred to the people for a vote before they shall become a law.”

Speaking in favor of his resolution, Judge White said:

“There is discontent among our people, as well as bitter criticisms and denunciation of Legislature. It is not confined merely to metropolitan newspapers, but finds utterance and sympathy in very high quarters. It is wise that the Bar Association take cognizance of this public discontent. It is said pressure and influence are used in the passage of acts in the Legislature, and some say there is corruption. I do not affirm that, but I do say that suspicions are current that such influences are used in the passage of iniquitous legislation. What would be the result if statutes should be left to the votes of the people by the Referendum? I do not think the result would be either anarchistic or confusing or tend to dethrone our Constitution.”

An Initiative and Referendum amendment to our Constitution, similar to the Oregon amendment, would not change our present methods of law making, so long as the law-making bodies remain true to their obligations. They would continue to draft, consider and enact laws, as they now do, and no reference to popular vote would be made, if no bad measures were passed and no good ones were put to death or pigeon-holed. But under the amendment suggested, if the Legislative body enact a bad law and the Governor signed it, five per cent. of the voters could force its submission to popular vote, with the result that the law would not be operative until the people had voted on it; and if the majority voted against it, it would not become operative.

So, if for any reason, or on account of any influence, a good measure

were pigeon-holed by the Legislature, then eight per cent. of the voting population could demand that it be submitted to a popular vote. If a majority voted against it, it would be dead. If a majority voted for it, it would become a law, whatever might be the influence opposed to it. It would seem that every one who has at heart the interests of his State, ought to be in favor of abolishing the lobby and the so-called "Legislative Boss."

Concerning these individuals, I quote with approval the words of Governor Cummins, in his message to the Iowa Legislature in 1902:

"The professional lobbyist has, I regret to say, become one of the features of Legislative Assemblies. Do not understand me to suggest that the halls of legislation should be inaccessible to either the individual or corporation. The lobbyist, however, who is for anything or against anything for hire, whose mission is to promote one measure or defeat another, who haunts the chambers of legislation and taints its atmosphere with his corrupt designs, who sends for members for interviews in the cloak room, who carries a tally sheet and watches the roll call, who shadows the members at their homes and hotels, injecting at all hours and all places his poison into the public service, is a criminal whose approach is an insult, and to whom the doors of the Capitol should never swing inward."

The Initiative and Referendum would abolish both.

It is urged against the Initiative and Referendum that if it were adopted only a few of the voters, comparatively, would vote on the questions submitted. I believe this would not be true if the measures so submitted were placed on separate ballots, as already suggested.

One admirable feature of Direct Legislation is that it would often accomplish good results without being used.

Before concluding this subject, I wish to disclaim in emphatic language any reflection or knowledge which would justify reflection upon this Assembly or any member of it. I speak for the future—a future pregnant with fears and hopes. No man can tell what the unrestrained modifications now going on in the world of finance, commerce and transportation may bring forth, what riff-raff the ebb and flow of politics may drift into places of honor and public trust. Against these contingencies, it seems prudent to prepare while we may, for a system which will put into the possession of the people the constitutional machinery by which eight per cent. of the voters can resurrect a good

measure which has been summarily pigeon-holed, and by which five per cent. of the voters could stop the operation of a bad law until the sovereign people can pass upon it at the ballot box. This, in my opinion, would be an effective check on the killing of good bills and the passage of bad ones.

Direct Legislation has been in operation in South Dakota several years, yet it has never been appealed to; a fact urged against the measure, but, in reality, a strong argument in its favor.

It remains, just the same, a "flaming sword" in the hands of the people, constantly reminding the unscrupulous lobby and the designing "boss" that there is a reserve power which, when the occasion demands, can and will be brought into requisition.

### PRIMARY ELECTION LAW.

Direct nominations at a primary election are just as essential as direct legislation.

Instead of delegation to others the power to represent the citizen in convention, why not give the citizen power to vote directly at the primary for his choice of candidates for office?

It would involve no additional expense.

If the primaries of all political parties were held at the same time and places, before the same judges, with the names of all the candidates printed on a ticket of uniform size and color, or upon one ticket, such as now prevails at general elections, the possibility of one political party controlling the nomination of another political party would be removed; the temptation to corrupt the voter be largely withdrawn and the elector's choice be registered beyond question.

The methods by which a person becomes a candidate, the manner of placing his name on and printing the ticket, and all the details of a system of direct nominations, is to be found in the laws of the State of Minnesota.

Massachusetts has adopted it in its senatorial and representative districts. It has grown in popular favor until the "Outlook," for November 1, 1902, referring to the experience of Massachusetts, says:

"What appeals to the public in this reform is the quick settlement of the strife, the justice done to all parties, the prevention of political trickery in conventions, and the dethronement of the professional poli-

tion. Already the success of this system has led to a demand for extension of the law, and it is seriously proposed to carry it so far as to discontinue even the State convention itself, with its historic associations."

I recommend the amendment of the present election laws so that the Minnesota system may be substantially enacted in Montana.

### ELECTION OF ALL IMPORTANT OFFICERS OF THE STATE.

By the same parity of reasoning employed in the three last subjects considered, the people should elect all important officers of the State Government.

Under the law, as it now stands, the Governor of the State appoints the State Examiner, State Inspector of Mines, State Coal Mine Inspector, State Boiler Inspector, Commissioner of Agriculture and Labor, State Veterinarian, Register of the State Land Office, State Land Agent and Game Warden.

These are all offices of high rank, having to do with most important parts of the public service. The election of these, as well as all other officers, by popular suffrage, is not only consistent with the safety of the people, but it belongs to them as a right and duty.

The Czar of Russia appoints his officers according to his sovereign pleasure, for he is regarded by his subjects as the source of all political power. But the proposition that all power is inherent in the people needs no elucidation in Montana.

It has been well said that the right to choose their own officers in the first place, and in the second place the exercise of this right in frequent elections are the two prominent characteristics of a free people.

The right itself distinguishes our government from a despotism; the frequent exercise of the right distinguishes it from an elective monarchy.

It does not militate against the argument to say that the power has seldom, if ever, been abused by a Governor of this State, or that, as must be conceded, the present incumbents of the appointive offices referred to, are men of the highest character and integrity, possessing the necessary qualifications for faithful and efficient public service. It is the system that is reprehensible—a system which is inconsistent and inharmonious with the genius and spirit of our institutions in its at-

tempt, without reason or necessity, to mingle and fuse together disagreeing elements of a democracy and a monarchy.

In short, in my opinion, executive appointments or patronage, if you please, and popular sovereignty are antagonistic elements in our form of government, and ought to be abandoned. It is on general principles like these, rather than for special reasons, that I recommend the election by the people of these important officers.

In keeping with the views here expressed, I indulge the hope that any office of importance created by this or any subsequent Legislature will not be made the subject of appointment by the Executive or otherwise, but that provision will be made for the election of the person to fill the same at the next ensuing general election, and in all cases where the Constitution does not otherwise provide, and it is deemed desirable to fill any vacancy temporarily, I suggest that the bill creating any office, board or commission, designate the person, board or commission to fill the same temporarily and until the next general election.

The duties imposed by the Constitution upon the Executive generally, and in the matter of appointments specially, are accepted with all the responsibilities that instrument expresses or implies, but there does not appear to be any reason why, until a general election is held, the Legislative Department should not assume whatever responsibility attaches to a temporary appointment of any officer whose office is created by it.

### SMELTER SMOKE.

The State Board of Sheep Commissioners, an organization created by the laws of this State, at its annual meeting, held in this city, December 11, 1902, adopted and forwarded to me a resolution, of which the following is a copy:

“Resolved, That the State Board of Sheep Commissioners of Montana, request the Governor to recommend to the Legislature at the forthcoming session to appoint a committee of that body to investigate and report promptly the effect on live stock from smelter smoke in Deer Lodge, Powell and Silver Bow counties, and also to what extent, if any, the neighboring streams are contaminated thereby.”

It is proper to say that the attention of the Executive Department has been frequently called to this subject during the past summer and fall, and lately by a large meeting of citizens at Deer Lodge city, in

Powell county, and such investigation and examination made concerning the same as the facilities at my command afforded.

The report of the investigation demonstrates the necessity of some legislative action in the exercise of its police powers requiring the use of proper appliances by smelters as a protection to the people and their property against noxious gases and poisonous fumes arising from the operation of their plants.

It is a universal rule that a man must so use his property as not to injure his neighbor, and if he does not observe this salutary rule he may be made to respond in damages and civil action to the party injured; but when the particular use to which property is devoted affects injuriously the public health and pollutes property entering into general consumption, it rises to the dignity of a public calamity demanding immediate supervision and suppression. It is no answer to this demand to say that this is difficult to comply with, or that it will involve expensive apparatus or improvements on the part of such plants in order to afford just protection to life.

In dealing with such questions, it is sufficient to say that the latter is the graver and higher question by as much as the man is above the dollar.

### CORPORATIONS.

The convention that framed the Constitution of this State was composed of able and patriotic citizens. They put forth an instrument, which, in its most important provisions is abreast with modern Constitutions and recent amendments to those of some of the older States. It goes without saying that its spirit and object should prevail as the organic law of the State.

Among these provisions, Article XV, Section II, reads, in part, as follows:

"And no company or corporation formed under the laws of any other country, State or Territory shall have or be allowed to exercise or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the State."

This is only just and reasonable. We may safely concede that a State has to discriminate between its own domestic corporations and those of other States so far as the right *to do business within its juris-*

*diction* is concerned, at least when such corporations are not engaged in interstate commerce.

When once the right of a foreign corporation *to do business* is lawfully established, it follows that domestic corporations rightfully engaged in the same or similar business under the same circumstances and conditions cannot be denied the same remedial rights and privileges enjoyed by foreign corporations.

Independent of the State Constitution, the duty of a State under a republican form of government to give equal remedial rights is as imperative as that it impose equal burdens and obligations.

But the rights and privileges referred to in our Constitution imply not only equal exemption with others under like conditions from charges and liabilities of every kind, but equal accessibility to the courts for the prevention of redress of wrongs and the enforcement of rights.

Under existing laws *foreign corporations* can remove cases on account of diversity of citizenship from the State to the Federal Courts, and thereby compel its adversary, whether an individual or a domestic corporation, to pursue litigation outside of the country or district of his or its residence, and, in case of appeal outside of the State, to San Francisco, if not to Washington, when no Federal question is involved, and in many instances, where the same cannot be done by a citizen or a domestic corporation. It would seem to follow that such burdens should not be imposed and such discriminations permitted under the spirit of our Constitution.

It is not perceived how this inequality can be obviated, unless it be by requiring foreign corporations to become domiciled or citizens of the State as a condition precedent "*to do business*" in this State. It is believed, however, that when this is done they can or ought to go into the Federal Courts upon precisely the same grounds and conditions as a citizen of the State, or a domestic corporation, and no other.

They would only lose their identity as foreign corporations in that respect, and would be allowed the same rights and privileges as domestic corporations and no greater, as contemplated by the fundamental law of the State.

With as liberal and inviting laws for local corporations as afforded by other States, it cannot be said that this would, in any manner, hamper or embarrass foreign corporations.

It is unfortunately true that many foreign corporations, while nominally located elsewhere, are virtually transacting all of their business within this State, and for these privileges they ought to have no advantage over the domestic corporation.

For these reasons I recommend the enactment of appropriate legislation to domesticate all foreign corporations doing, or which may hereafter do business, in this State.

Perhaps one of the most inexcusable inequalities between foreign and domestic corporations violative of that principle which declares in favor of "equal rights to all and special privileges to none," is in the amount of fees required to be paid to the State under the present law. The following fees may be collected of domestic corporations:

"For recording and filing each certificate of incorporation, and each certificate of increase of capital stock, he shall charge and collect the sum of fifty cents on each one thousand dollars of the capital stock of any company or corporation, provided that whenever the capital stock of any corporation shall exceed one million dollars he shall charge and collect the sum of twenty-five cents on each one thousand dollars of the capital stock in excess of one million dollars; provided that he shall charge and collect from each company or corporation not less than twenty dollars for recording and filing each certificate of incorporation and each certificate of increase of capital stock, which sum shall increase the fee of issuing the certificate of incorporation or the certificate of increase of capital stock where the capital stock is thirty-four thousand dollars or less; provided, however, that no company or corporation shall be required to pay a fee in excess of one thousand dollars for filing its articles of incorporation or certificate of increase of capital stock."

While fees which can be collected of a foreign corporation are as follows:

X. "For filing each certified copy of the Charter or Articles of Incorporation of any foreign corporation, twenty dollars.

XI. "For filing each notice of appointment of agent, five dollars.

XII. "For filing each annual or semi-annual statement of any foreign corporation, five dollars."

In other words, a domestic corporation with a capital stock of one million dollars must pay to the State \$503.00, while a foreign corporation capitalized for the same sum and for the same purpose has to pay only \$30.00.



This is too flagrant an injustice to require more than a suggestion to secure its correction. The fees should be the same. Such modification would increase the revenue of this State immensely.

This last subject is considered in the annual reports of the State Examiner and Secretary of State, and to which your attention is called.

### RAILROAD MERGERS.

Since the adjournment of the last Legislature, public attention has been largely attracted to a merger, or an attempted merger, of the three principal lines of railways in this State.

Interest, in a greater or less degree, concerning this subject, exists in Minnesota, North and South Dakota, Idaho and Washington, as well as in this State.

In November, 1901, Hon. S. R. Van Sant, Governor of Minnesota, undertook to organize opposition to the scheme of consolidation as avowed by its formidable promoters.

To this end he called a convention of Governors and Attorney-Generals of the several States I have mentioned to meet in this city, on December 29th, 1901, which accordingly met at the Executive office at Helena, and at which convention all the above named States, except North Dakota, were represented. The convention continued in session for three days, during which time valuable information was furnished and much interesting discussion was had upon the subject under consideration.

The occasion was improved to cultivate a closer acquaintance and friendship between the officials of the various States who had honored Montana by their distinguished presence, and which, it is believed, will eventuate in mutual good to our neighboring States, as well as to ourselves.

The convention was a harmonious one, and resulted, among other things, in the unanimous adoption of the following resolution:

“In our opinion, the consolidation, or threatened consolidation, of the Great Northern, Northern Pacific and Burlington railway systems in the several States through which they run as parallel and competing lines, is contrary to sound public policy, and also, with the exception of Idaho, is in violation of the Constitution or laws of said States; and mindful of the obligation which the law imposes in such cases upon the officials of the several States here represented, we hereby give our

unqualified approval and endorsement to any proper and suitable proceedings which may be instituted in any court having jurisdiction by the sovereign State of Minnesota, or any other State affected thereby, designed to speedily and finally test and determine the validity of such consolidation or threatened consolidation, and further,

“We unanimously protest against any combination or consolidation which restricts or stifles free competition in the trade or commerce of the country.”

The last clause of this resolution finds ample approval in an opinion of the Supreme Court of this State, from which I extract the following:

“Without rivalry of railroads monopoly might grow up, and, to bring the dangers of destroying competition before us, that remarkable development which this young State has made in its healthy development could be stayed by the consolidation or amalgamation of railroad corporations owning competing lines.

“The maxim, “competition is the life of trade,” forms the basis of the constitutional prohibition against consolidation of rival railroads.”

Touching this matter, Governor Cummins, of Iowa, addressing the Legislature of that State in 1902, said:

“Competition is the paramount law of industrial life. It may, and very often does, destroy; but in my judgment it must exist in full vigor if we do not desire the government to assume the power of fixing the prices of industrial products.

“It must be clear that if a single corporation owned and controlled all the transportation facilities of the United States it would be absolutely necessary for the government to prescribe and enforce the rates for transportation service. It is equally clear that if a single corporation controlled the manufacture of the important commodities required by modern life, and the monopoly was likely to be long continued, it would be necessary for the government to fix the price at which such commodities should be sold. It cannot be successfully denied that every consolidation, even though it does not draw in all the products in which it deals, narrows the field of competition.”

The State of Minnesota subsequently instituted a suit in the Supreme Court of the United States to prevent the alleged merger, which was dismissed for want of jurisdiction.

Washington and Montana, however, occupied a different position from Minnesota, so that either of these States could maintain an action

by which the right to consolidate could be determined without running counter to the jurisdictional question raised in the Minnesota case. Soon thereafter, the State of Washington instituted a proceeding similar to that brought by Minnesota, which is now pending and undetermined in the Supreme Court of the United States. I would gladly have taken the initiative in behalf of this State, and brought such a suit as Washington did, but having no appropriation available for payment of the large expenses consequent upon assembling in the East, in what was sure to be a protracted trial, and procuring additional counsel which a case of such magnitude would require, I readily yielded the right of way to the State of Washington, as I was obliged to do, or call an extra session of the Legislature to provide for such expense—a course which did not seem to me to be prudent in view of the willingness of Washington to proceed.

It is hoped and believed that the spirit of the resolution adopted by the convention of Governors, and before referred to, will find complete and full vindication and approval in the final decision of the pending case by the Supreme Court of the United States.

### RAILROAD COMMISSION.

I recommend the passage of a law creating a State Railroad Commission.

Section 5, Article 15, of our Constitution provides that: "All railroads shall be public highways and all railroads, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to control by law rates of charges for the transportation of passengers and freight by such companies as common carriers from one point of the State to another."

A Commission to be elected by the people should be invested with as ample powers as this provision of the Constitution will warrant.

Another provision of our Constitution worthy of mention is to be found in Section 6 of the same Article, forbidding such companies, or the lessees or the managers thereof from consolidating their stock, property or franchise with any other such company owning, or having under its control a parallel or competing line. It likewise forbids such companies from uniting their business or earnings with any other and

prohibits any officer thereof from acting as an officer of any other such company owning or having control of a parallel or competing line.

Among other inhibitions found in the Constitution is the following in Section 7 of the same Article:

“No railroad or transportation or express company shall be allowed to charge, collect or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line than it charges for the same class of freight or passengers to any more distant place or section upon its route or line within this State.”

I would not conscientiously approve of legislation which will be oppressive or unjust to any person or property in this State, but I shall insist that all persons, whether natural or artificial, yield obedience to the constitutional requirements referred to.

To tolerate in this State any power above the law, or submit to the exercise of privileges, granted by us to corporations, in such manner as to be oppressive or unjust to the people would be to surrender our sovereignty and write ourselves down as amiable idiots, unfit for local self-government.

Our aim should be, in resisting these encroachments, not to oppress nor submit to oppression.

The salaries and expenses of such a Commission, at a time when the reduction of public expenses is paramount, may have diverted you from serious consideration of this question, but this need not deter you in going forward in this important work.

This item may be well provided for in the act creating the Commission, by making it a charge against the franchise and property of such companies. That is to say, the salaries and the expenses shall be paid by the State, but the money with which it is paid shall be raised by a special levy therefor against the property of such railroad companies. This is only just, because although railroad, express and transportation companies are private corporations, as distinguished from municipal corporations, their uses are public.

As said by Mr. Justice Field, speaking for the Supreme Court of the United States, in *Charlotte, etc., Railroad Company vs. Gibbs*, reported in the 142nd volume of the reports of that Court:

“They are formed for the convenience of the public in the transportation of persons and merchandise, and are invested for that purpose

with special privileges. They are allowed to exercise the State's right of eminent domain that they may appropriate for their uses the necessary property of others upon paying just compensation therefor, a right which can only be exercised for public purposes. And they assume by the acceptance of their charters the obligations to transport all persons and merchandise upon like conditions and at reasonable rates, and they are authorized to charge reasonable compensation for the services they thus perform. Being the recipients of special privileges, from the State, to be exercised in the interest of the public, and assuming the obligations thus mentioned, their business is deemed affected with public use, and to the extent of that use is subject to legislative regulation. That regulation may extend to all measures deemed essential, not merely to secure the safety of passengers and freight, but to promote the convenience of the public in the transaction of business with them, and to prevent abuses by extortionate charges and unjust discrimination. It may embrace a general supervision of the operation of their roads, which may be exercised by direct legislation commanding or forbidding, under severe penalties, the doing or omission of particular acts, or it may be exercised through Commissioners specially appointed for the purpose.

"The mode or manner of regulation is a matter of legislative discretion. When exercised through Commissioners their services are for the benefit of the railroad corporations, as well as of the public. Both are served by the required supervision over the roads and means of transportation, and there would seem to be no sound reason why the compensation of the Commissioners in such case, should not be met by the corporations, the operation of whose roads and the exercise of whose franchises are supervised.

"In exacting this there is no encroachment upon the Fourteenth Amendment. Requiring that the burden of a service deemed essential to the public, in consequence of the existence of the corporations and the exercise of privileges obtained at their request, should be borne by the corporations in relation to whom the service is rendered, and to whom it is useful, is neither denying to the corporations the equal protection of the laws, nor making an unjust discrimination against them. All railroad corporations in the State are treated alike in this respect. The necessity of supervision extends to them all, and for that supervision the like proportional charge is made against all. There is no

occasion for similar regulations for the government of other than railroad corporations and, therefore, no charge is made against them for the expenses and salaries of the Commissioners.

“The rule of equality is not invaded where all corporations of the same kind are subjected to like charges for similar services though no charge at all is made against other corporations. There is no charge where there is no service rendered. The Legislative and Constitutional provision of the State, that taxation of property shall be equal and uniform and in proportion to its value, is not violated by exacting a contribution according to their gross income in proportion to the number of miles of railroad operated in the State to meet the special service required.”

The learned Justice then proceeds to show that “there was many instances where parties are compelled to perform certain acts and to bear certain expenses when the public is interested in the acts which are performed as much as the parties themselves.”

He instances the improvement of streets, where the work done is chiefly for the public, and yet the adjoining property owners are made to bear the expense; the draining of marsh lands in which the public is directly interested in removing the causes of malaria, and yet the expense and labor is usually thrown upon the owners of the property; quarantine regulations which are adopted for the protection of the public against the spread of disease, and yet a part of all quarantine systems requires the vessel to be examined to pay the expense; the compulsory examination of a railroad engineer to ascertain whether he is free from color-blindness, designed for the protection of the public alone, but properly chargeable against the railroad company; work done in a particular county for the benefit of the public, the cost of which is oft times cast upon the county itself instead of upon the whole State. He concludes by saying:

“In such instances, where the interest of the public and individuals are blended in a work or service imposed by law, whether the cost shall be thrown entirely upon individuals or upon the State or be apportioned between them, is a matter of Legislative discretion.”

But if any other reason was required for thus taxing them for the maintenance of such Commission, it is to be found in the facts that their continual violations of the Constitution is the primary cause and the only reason for the creation of the Commission.

The Commission should be non-partisan in its membership, and the salaries ought not be excessive, but they should be such as to command the services of men of the strictest integrity, the best executive ability, and the loftiest courage.

### FELLOW-SERVANT LAW.

The various political parties finding representation in this Assembly have, in one form or another, pledged themselves to the passage of a Fellow-Servant Law. Many of the statutes of the various States have extended the common law liability, but the phraseology employed by them is so involved and complicated that a decision of the Court of last resort is generally necessary to obtain a proper construction of their meaning.

The recent decisions of many of the Courts tend to place most all employees in the line of fellow servants. Without casting or intending to cast any reflections upon the soundness of such decisions, it is still a serious question whether they meet the demands of common justice and right. Assuming that they are in accord with precedents, the only way the question can be met, if it does not coincide with our ideas of right and wrong, is by legislation defining in a plain and practical way the obligations and duties of employer and employee.

I therefore recommend that you give this matter your serious consideration, and enact such a law as will relieve the question of uncertainty, and rest the right of all parties interested upon just and humane principles. It is far better for both to know the exact relations that exist by positive law, than to leave it to be determined by varying and conflicting precedents established by judicial decisions.

### WOMAN SUFFRAGE.

As a member of the Constitutional Convention of this State, I voted in favor of submitting the question of woman suffrage to the people. I am in favor of submitting it now. Upon this question I have no disposition or purpose to be effusive. I am content to rest it, in a great measure, upon the broad proposition that "the rights of the people are safe with the people," a proposition to which I have heretofore adverted.

It is fair to presume that sentiment is and will be divided. Some

there are who would not have women "wrangle in conventions or mingle in the turmoil of public life."

These fields they would reserve largely for the demagogue, the marplot and the grafter. The exercise of the elective franchise, as a rule, is no longer associated with the noise and indignities which once accompanied it. But if such be apprehended, it can be safely avoided by abolishing the convention and endorsing the system of direct nominations already referred to—a system, which in connection with the Australian ballot, is so orderly in arrangement and quiet in execution that one exercising the privilege at the primary and ultimate election will meet with fewer obstacles than will ordinarily be encountered at the general delivery of a country post office.

So far as it affords an opportunity and incentive to participate in public discussions, it would not enlarge the right which now prevails, a right which, if abused by man or woman, brings its own condemnation and consequent curtailment.

A new force is demanded in this State to clean out the Augean Stables whose poisonous effluvia ladens the political atmosphere and corrupts the public morals.

Unaided and alone we cannot cope with the situation with the hope of complete success in any reasonable time. It requires more than the strength of Hercules or the Omniscience of Jove.

In estimating the importance of this movement it is well to look beneath another popular fallacy, that the right to vote should carry with it the corresponding duty to bear arms and "flame in the front of war." This obligation of citizenship which ignores every quality but strength, was inherited from a remote antiquity when physical prowess ruled the world; when greatness among men was determined by the pound. The strong man was the king among his fellows. Red brawn was the badge of Royalty. But the reverence and terror which physical strength once inspired have become a matter of history, and in its stead the heart and intellect have been recognized if not enthroned, bringing with the change the almost universal desire for a more humane settlement of national differences, a plan which is rapidly approaching final solution in peaceful arbitration. Back of this and all other great problems, however, must be the combined influence of truth and virtue, morality and patriotism.

In such an emergency what can be more desirable than the active



co-operations of the maidens and matrons, the future mothers in this State, in preserving the present and guiding the next generation, not only in religious but also in civil and political prudence? Let it be for them not only "to outwatch the stars" for the purity of the ballot and consequent safety of the State, but by their personal participation in every contest, to make righteous every result.

When this co-operation shall have been authorized and clothed with organic life, it will outweigh the armies and navies of the world and accomplish more for Liberty and Equality, Justice and Fraternity than all the great battles which have ever been fought from Marathon to Manila.

But whether these views be concurred in by you or not, correct principle of government demand that a request freighted with such duties and responsibilities, and having so many advocates, be submitted to the people for their consideration and decision.

#### PIONEER DAY IN THE PUBLIC SCHOOLS.

The Society of Montana Pioneers at its last annual meeting, held at Dillon, adopted and forwarded to me a resolution of which the following is a copy:

"Whereas, It is a beautiful custom in many States of the Union to observe what is known as "Pioneer Day," and

"Whereas, In harmony with that custom the public schools of those States have set apart a certain day in each year on which pioneers and pioneer history are taught and discussed, now therefore be it

"Resolved, That we admire the custom and recommend its adoption in our beloved Montana; and be it further

"Resolved, That the Secretary of the Society of Montana Pioneers be instructed to furnish the Governor and Superintendent of Public Instruction of Montana with a copy of this resolution."

The suggestion is timely and good. Of all the sources of State pride, and of all the fountains of inspiration which our history furnishes and opens to the youth of our land, none is more beautiful to behold or worthy to contemplate than the intrepid courage and self-sacrificing devotion of the pioneers who laid the foundation deep and wide of this great State. The great thoughts that have illuminated it, the great words that have been spoken in it, the great deeds which have

been done in it, and the heroic self-sacrifice which has sanctified it, are a part of their imperishable glory. It is a source of infinite pleasure to press their first request for legislation. Let us see that it is carried out, so that the children of this State, who henceforth are to be their successors and its champions and defenders, may have the opportunity to weave into the web and woof of their lives the rich inheritance which the precious knowledge and memory of the pioneer men and women of Montana will forever inspire.

### ROAD LAW.

A message to the Legislature that omitted a recommendation to amend, revise or repeal the road law, would be a novelty which would not escape the watchful eye and determined pursuit of the industrious and proficient Secretary and Librarian of the Historical and Miscellaneous Department of the Montana State Library.

After a long period of parturition the Seventh Legislative Assembly brought forth a voluminous document which found its way to the Executive office at 11:55 o'clock P. M. on the last day of the session. Externally there was nothing about it except its size to excite suspicion or alarm. Internally, I did not examine it, for in the five minutes left for that important purpose I could not hope to do it justice. It was supposed to contain the gathered wisdom of ages, and, like the Wonderful One-Hoss Shay,

“That was built in such a logical way,”

it was expected to withstand the shock of time, and the strain of man for at least a hundred years. But, alas! all things must have an end—and so it must be with the Geiger road law. When submitted to analysis, it was found to be replete with incongruities and impossible of satisfactory administration. In less than thirty days after its birth it was virtually dead. Every road trustee has volunteered to be its funeral orator, every county commissioner is willing to be its active pall-bearer, and every road district is yawning to be its grateful cemetery. As a law it is lame and impotent. It is full of holes, so to speak, visible not only to the trained eye of the lawyer and statesman, but holes through which the layman can see as “through an open transom.”

There isn't enough of it left to amend or revise. Like the Deacon's wonderful masterpiece,

“——it went to pieces all at once,  
All at once, and nothing first,  
Just as bubbles do when they burst.”

Responding to inquiries as to its efficiency, two counties make no complaint, *while twenty-one counties want it repealed. Several of these are most emphatic in denouncing it.*

Carbon County says it cost them \$1,600.00 to disburse \$2,500.00, and that it has no redeeming feature. Fifteen counties report the collection of per capita road tax is much less under the present law, in some counties 50 per cent. less.

Let us have a simple and effective law suited to our sparsely settled condition—one which will not only facilitate the *building of roads*, but the *building of good roads*,

Since the invasion of railroads and the daily visit to nearly every county seat of “the great black steed with heart of fire and breath of flame,” the construction and maintenance of decent county roads have been largely neglected. Conscious of the great evolution now going on in transportation and transportation facilities by which the “Captains of Industry” in that line of effort have decreed that competition is no longer necessary, a philosophy in which my education has been neglected, and mindful of that familiar couplet, which I will not quote lest I be considered irreverent, about the rich riding in chaises and their less fortunate brothers being obliged to walk, I will be pardoned, I hope, if I appear to take a personal interest in the subject of good roads, or seem to realize the truth of the melancholy refrain of an unknown writer:

“We hear no more of clanging hoofs,  
And the stage coach rattling by,  
For the steam king rules the travelled world,  
And the old Pike's left to die.”





