

CHAPTER 2: GOVERNMENT IN MONTANA

Introduction

There are many governments operating in Montana. This chapter describes and discusses the authority of the three branches of state government, the federal government, Indian tribes, and local governments.

Three Branches of State Government

The Montana Constitution provides for three distinct branches of state government. The three branches of government and their general functions are:

- ✓ the Legislative Branch, which sets public policy through laws and appropriations;
- ✓ the Executive Branch, which implements laws; and
- ✓ the Judicial Branch, which settles disputes arising from the interpretation or application of laws.

Furthermore, the constitution prohibits one branch from exercising the power of the other branches, except when the constitution expressly directs or permits this exercise of power. This concept is referred to as "separation of powers".

The application of this important constitutional provision may not be as clear as this simplistic summary indicates. For example, the Legislature may delegate rulemaking power to state

agencies. Once adopted, these rules have the force of law. This delegation of power is valid if the Legislature provides sufficient statutory standards and criteria to guide the executive agency. Delegation of rulemaking authority without sufficient guidelines is an unlawful delegation of power.

Legislative Branch

The Legislature is a body of elected persons that has the power to enact laws, levy taxes, and appropriate money. The Montana Legislature is bicameral and is composed of 50 senators and 100 representatives. The Senate has the power to confirm appointments made by the Governor, such as the appointment of agency heads.

The Legislature also has impeachment powers. The House of Representatives may accuse certain officials of felonies, misdemeanors, or malfeasance in office. The Senate may try and convict these officials and require that the officials be suspended or removed from office.

There are limits on the power of the Legislature. The Legislature may not exercise the powers of the other branches of state government. For example, the Legislature generally may not interfere with the Executive Branch in the purely administrative aspects of carrying out the law, such as imposing a hiring freeze or making specific staffing and resource allocation decisions. Legislative power and responsibility may not be abdicated to private organizations or the federal government.

The organization and services of the Legislative Branch are described in more detail in the following chapter.

■ Executive Branch

The Executive Branch includes elected officials and agencies under the jurisdiction of these officials. Article VI, section 7, of the Montana Constitution provides for no more than 20 principal departments and for the 3 boards of education. Elected officials and the agencies under their jurisdiction are described below.

- ✓ **Governor.** There are 13 principal departments established in state law whose heads are appointed by the Governor. There are three boards established in the Montana Constitution that are under the authority of the Governor, which along with the Superintendent of Public Instruction constitute the Department of Education. In addition, there are numerous additional boards, councils, commissions, and other entities established by law. These are attached to a department or board for administrative purposes.
- ✓ **Lieutenant Governor.**
- ✓ **Secretary of State.**
- ✓ **Attorney General.** The Attorney General is the head of the Department of Justice.
- ✓ **State Auditor.** The State Auditor serves as the Securities Commissioner and the Commissioner of Insurance.
- ✓ **Superintendent of Public Instruction.** The Superintendent of Public Instruction supervises the Office of Public Instruction.
- ✓ **Public Service Commission.** The Public Service Commission functions as the department head for the Department of Public Service Regulation.

■ Judicial Branch

The judicial power of the State of Montana is vested in the following:



- ✓ the Supreme Court, consisting of a Chief Justice and six Associate Justices;
- ✓ the District Courts;
- ✓ the Workers' Compensation Court;
- ✓ the Water Court; and
- ✓ the courts of limited jurisdiction, which include Justices' Courts, Municipal Courts, and City Courts.

Unlike most state court systems and the federal judiciary, Montana does not have an intermediate appellate court. Consequently, the Supreme Court hears direct appeals from all of the District Courts across Montana, as well as from the Workers' Compensation Court and the Water Court. Because people have a right to an appeal and there is no intermediate appellate court for Montanans to go to, the Montana Supreme Court does not have discretion to turn down appeals; it must take them all and resolve them.

The Montana Constitution also vests the Supreme Court with original jurisdiction. Original jurisdiction may be asserted via habeas corpus applications from inmates and petitions for supervisory control over District Courts in cases still pending there. The Supreme Court also may exercise original jurisdiction in a case that has not been through a District Court if there are no facts in dispute and the case presents only legal or constitutional questions. An example of a case in recent years in which the Montana Supreme Court had accepted original jurisdiction of this type was the challenge to term limits.

ANY ACT OF CONGRESS THAT IS
NOT ITSELF IN VIOLATION OF THE
U.S. CONSTITUTION MAY NOT BE
CONTRAVENED BY A STATE
LEGISLATURE.

The Montana Supreme Court has other duties, including lawyer discipline and revisions of various rules, such as the Montana Rules of Civil and Appellate Procedure, the Rules of Professional Conduct that apply to Montana lawyers,

and the Rules of Lawyer Disciplinary Enforcement that govern lawyer discipline cases. On occasion, the Montana Supreme Court also must determine whether to impose judicial discipline as recommended by the Judicial Standards Commission. In addition, the Supreme Court, as part of the state assumption of District Court funding, must adopt a personnel plan for the Judicial Branch. The Chief Justice also chairs the District Court Council, created by the Legislature to implement and administer the state-funded District Court program.

The Clerk of the Supreme Court keeps all Supreme Court records, maintains the court's docket, and performs other administrative tasks.

The Court Administrator is the chief administrative staff person for the judiciary. Answerable to all seven justices of the Supreme Court, the administrator executes the day-to-day administrative operations of the Supreme Court, including some administrative matters concerning District Courts and courts of limited jurisdiction.

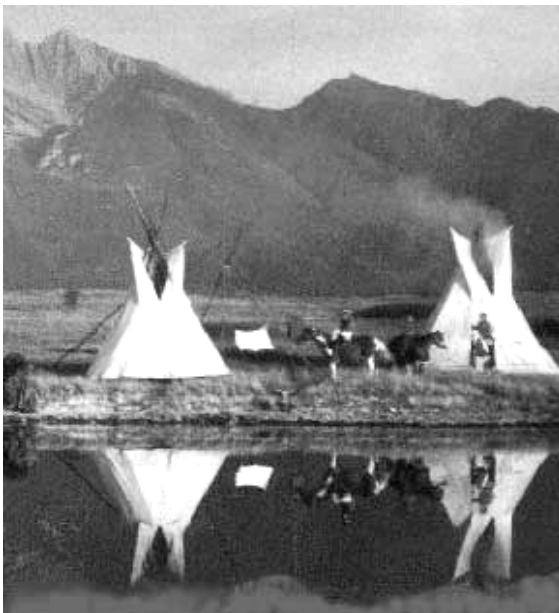
■ Federal Government

Under the supremacy clause of the U.S. Constitution, any act of Congress that is not itself in violation of the U.S. Constitution may not be contravened by a state legislature. The U.S. Constitution also places certain direct limitations upon the states. For example, compacts between states require congressional consent. The federal government sometimes encourages the states to adopt or comply with certain laws by

withholding federal funds if a state does not comply with a federal requirement.

■ Tribal Governments

Although Montana is home to seven reservations, the state has eight tribal governments (see **Figure 2-1**). Indian tribes have the right to develop their own form of government and to establish their own civil and criminal laws; jurisdiction is often shared among federal, tribal, and state governments. Tribal courts adjudicate the laws of tribal governments. The U.S. Constitution gives plenary authority over Indian tribes to the federal government, not the states. As a result, the federal government has a trust responsibility to fulfill treaty commitments



Mission Mountain Encampment
Photo courtesy of Monte Marengo

that are unique to Indians and Indian tribes. The Montana Constitution explicitly acknowledges that all lands owned or held by any Indian or Indian tribe are under the absolute jurisdiction and control

of the U.S. Congress. With rare exceptions, a state has jurisdiction within a reservation only to the extent that Congress has delegated specific authority to the state or in situations in which neither federal nor tribal law preempt state law.

The Legislature established the Office of State Coordinator of Indian Affairs, which is administratively attached to the Governor's Office. The coordinator is charged with carrying out the legislative policy regarding Indian affairs, which is established in section 90-11-101, MCA. One element of the legislative policy is a declaration that "the best interests of Montana Indian tribes will be served by engaging in government-to-government relationships designed to recognize the rights, duties, and privileges of full citizenship that Indians are entitled to as citizens of this state". Dealing with tribal governments on a government-to-government basis means that a dialogue is initiated between governing bodies rather than interacting with tribal governments as if they were special interest groups.

Under the State-Tribal Cooperative Agreements Act (Title 18, chapter 11, MCA), state agencies may enter into agreements with tribal governments to administer regulations and programs and to promote cooperation between state agencies and tribal governments in mutually beneficial activities and services. For example, since 1990, the state has had a cooperative agreement with the Confederated Salish and Kootenai Tribes regarding fish and wildlife management on the Flathead Reservation.

Figure 2-1. Indian Reservations and Tribal Governments in Montana

Blackfeet Reservation
Crow Reservation
Flathead Reservation
Fort Belknap Reservation
Fort Peck Reservation
Northern Cheyenne Reservation
Rocky Boy Reservation
Little Shell Band of Chippewa*

*The Little Shell Band of Chippewa has a tribal government but does not have a reservation. It is seeking federal recognition, which provides a tribal government with access to federal programs and services.

Local Governments

Local governments, such as counties and incorporated cities and towns, are legal creations of the state. The powers of local governments are derived from the state's constitution and statutes. Under the Montana Constitution, there are two basic types of local governments: governments with general powers and governments with self-governing powers.

Local governments with self-governing powers are those that have adopted a self-governing charter under Montana law. In general, local governments with general powers have those powers that are expressly or implicitly granted by the Montana Legislature. Local governments with self-governing powers have those powers that are not specifically denied by Montana law or the individual government's charter.