

CHAPTER 4: LEGISLATORS

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

--Henry Clay

Introduction

A representative democracy is a system of government in which power is held by the people and exercised through elected representatives. As elected representatives, Montana's legislators play a key role in our government. The general responsibilities of Montana's legislators are summarized below.

- ✓ support, protect, and defend the U.S. and Montana Constitutions;
- ✓ serve the constituents living in the district;
- ✓ serve the citizens of the state as a whole;
- ✓ act as a liaison between constituents and state government;
- ✓ study, discuss, request, and vote on proposed legislation;
- ✓ create, amend, and repeal state laws and programs;
- ✓ allocate state resources to agencies and programs;
- ✓ ensure that laws are carried out according to the intent of the Legislature;
- ✓ oversee the work of state agencies; and
- ✓ act as a balance to the Executive and Judicial Branches of government.

In carrying out all these duties, legislators must consider competing values, interests, and constituencies.

Unlike legislators in many other states, Montana's legislators are compensated part-time for their public service.

This chapter addresses the following topics related to legislators:

- ✓ representation;
- ✓ qualifications;
- ✓ privileges;
- ✓ duties, including ethical conduct; and
- ✓ accountability.

Requirements directed at candidates for election and the conduct of elections are not addressed in this chapter.

Representation

Each Montanan is represented by one state senator and one state representative.

The Montana Senate consists of 50 members elected to serve 4-year staggered terms. The Montana House is composed of 100 members chosen for coterminous 2-year terms.



Montana is divided into geographical districts, based upon population, from which senators and representatives are elected. Each member of the House of Representatives represents a district compact and contiguous. The Montana Constitution requires that all districts be as nearly equal in population as is practicable. Each member of the Senate represents a district composed of two adjoining House districts.

Redistricting and reapportionment of legislative districts takes place following each decennial census. The Montana Districting and Apportionment Commission, composed of five citizens, is responsible for this task in Montana. The members of the Commission may not hold public office. The Commission must submit a proposed plan to the Legislature. The Legislature then has 30 days to return the plan to the Commission with its recommendations. The Commission is required to file its plan with the Secretary of State within 30 days of receipt of recommendations from the Legislature. The plan becomes law upon filing with the Secretary of State. Through this process, new districts were established for the 2004 elections.

■ Qualifications

Qualifications for a Montana legislator include the following:

- ✓ United States citizen;
 - ✓ Montana resident for at least 1 year before the general election;
 - ✓ 18 years of age or older;
- ✓ not serving a sentence for a felony;
 - ✓ not of unsound mind; and
 - ✓ for 6 months preceding the election, resident of the county, if it contains one or more districts, or of the district, if it contains all or parts of more than one county.

A legislator may not serve as a member of Congress or hold a public office of a civil nature during the legislator's term. A legislator may run for another office; however, if elected to the other office, the legislator must resign the legislative seat.

■ Privileges

■ Immunity

The rationale for legislative immunity was reiterated in a 2002 federal District Court order. Quoting prior holdings, the court stated:

Legislators enjoy immunity from prosecution when acting in their capacity as lawmakers. These [immunities] are thus secured, not with the intention of protecting the members against prosecutions for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal.¹

Legislators are exempt from arrest during sessions of the Legislature and while going to and from legislative sessions. This exemption does not apply in the case of a felony or a breach of the peace.

Members and staff of the Legislature are immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts.

A legislator may not be questioned in any other place, including a court, for any speech or debate in the Legislature.



Illustration by Jay Rath

■ Harassment

Legislators (and legislative employees) have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas. This is true regardless of whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

■ Duties

A guiding statement regarding a legislator's public duty is found in section 2-2-103(1), MCA:

The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee

shall carry out the individual's duties for the benefit of the people of the state.

The Montana Constitution requires the Legislature to provide a code of ethics prohibiting conflict between public duty and private interest for members of the Legislature and others. Provisions governing ethical conduct have been adopted in statute and rule.

■ Participation

Montana law provides that a "legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature". Legislators must be present when their house is in session, unless they are excused. Senators are required to vote, unless they are excused. Representatives are required to vote when present, unless a member has disclosed a conflict of interest.



■ Disclosure of Conflict of Interest

Understanding the laws and rules governing conflict of interest is particularly important for members of a citizen legislature such as the Montana Legislature. As noted previously, under Montana law, a legislator has a responsibility to the legislator's constituents to participate in all matters as required by rules contained in the *Rules of the Montana Legislature*. A legislator may have a personal interest or a private interest that would be affected by a legislative decision.

If a legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety, the legislator is required to disclose the interest prior to participating in an official action. The law establishes criteria that the legislator shall consider in determining whether or not to disclose an interest. The legislator may ask the Ethics Committee for the member's house for advice regarding the disclosure requirement.

A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class is so narrow that the vote will have a direct and distinctive personal impact on the legislator.

Both houses require disclosure prior to voting. Senators are required to vote unless excused, while representatives may choose whether or not to vote after

a conflict of interest has been disclosed.

■ Prohibited Activities

A legislator may not:

- ✓ disclose or use confidential information acquired in the course of official duties in order to further substantially the legislator's personal interests;
- ✓ accept a gift with a value of \$50 or more or a substantial economic benefit that is equivalent to a gift. The law clarifies what is considered a gift. Campaign contributions reported as required by law are not considered gifts.
- ✓ accept a fee, contingent fee, or any other compensation (except the official compensation for legislators) for promoting or opposing the passage of legislation;
- ✓ seek other employment for the legislator or solicit a contract for the legislator's service by use of the office;
- ✓ accept a fee or other compensation (except for compensation and expenses allowed when the Legislature is not in session) from a Montana state agency or political subdivision of the state for speaking to the agency or political subdivision;
- ✓ have an interest in a contract made by the legislator in the legislator's official capacity or by



- ✓ any body, agency, or board of which the legislator is a member if the legislator is directly involved with the contract; or solicit, accept, or agree to accept a pecuniary benefit* from a person who is known to be interested in or likely to become interested in a matter before the Legislature or a committee of the Legislature.

■ **Business and Employment Disclosure**

Legislators are required to file a business disclosure statement with the Commissioner of Political Practices by December 15 of each even-numbered year. Legislators who are paid by more than one public employer are also required to file a disclosure statement.

■ **Accountability**

■ **Legislature**

Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all of its members.

Montana law requires each house of the Legislature to have an Ethics Committee. The Ethics Committee must consist of two members of each political party. The Committees may meet

* A pecuniary benefit is defined in section 45-2-101(56), MCA: ""Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain."



jointly, and the joint committee may consider matters affecting the entire Legislature.

The Ethics Committee is responsible for:

- ✓ educating members about the code of ethics in Montana law;
- ✓ advising and determining when there is a conflict of interest that requires disclosure; and
- ✓ responding to complaints referred by the Rules Committee that allege a violation of statute or rule by a legislator.

The Senate Rules specifically address the matters that may be referred to the Senate Ethics Committee.

In each house, the general process is as follows:

- ① The Rules Committee refers a matter to the Ethics Committee.
- ② The Ethics Committee considers the matter. The Ethics Committee may dismiss the charge, refer the matter to the Lewis and Clark County Attorney, if appropriate, or make a recommendation.
- ③ If the Ethics Committee makes a recommendation, it is referred to the Senate or the Committee of the Whole of the House of Representatives.

■ **Commissioner of Political Practices**

A person alleging a violation of the code of ethics codified in Title 2,

chapter 2, part 1, MCA, that does not involve a legislative act by a legislator may file a complaint with the Commissioner of Political Practices.

■ **Recall**

A legislator may be recalled by the voters in the legislator's district. The basis for the recall must be one of the following:

- ✓ lack of physical or mental fitness;
- ✓ incompetence;
- ✓ violation of the oath of office;
- ✓ official misconduct; or
- ✓ conviction of a felony offense.

The recall process is initiated by a petition of electors, and the question is decided through an election.