

VOLUME NO. 37

OPINION NO. 168

CONSTITUTIONAL LAW - Executive Branch, independent offices within; GOVERNOR - Powers, Collective bargaining for executive agencies; PUBLIC EMPLOYERS - Collective bargaining for executive agencies; MONTANA CONSTITUTION, 1972 - Article VI, sections 1(1), 2, 4, 7, 8; REVISED CODES OF MONTANA, 1947 - Sections 59-1602(1), 59-1609, 82A-105.

HELD: The governor or his designee has the statutory authority to represent all agencies of the Executive Branch for purposes of collective bargaining with public employee unions.

15 November 1978

Dave Lewis, Director
Department of Administration
S.W. Mitchell Building
Helena, Montana 59601

Dear Mr. Lewis:

You have requested my opinion on the following question:

Does the Governor or his designee have the statutory authority to represent all agencies of the Executive Branch for purposes of collective bargaining with public employee unions?

The Collective Bargaining for Public Employees Act, Title 59, chapter 16 of the Revised Codes of Montana, 1947, was enacted in 1973 to grant public employees the statutory right to bargain collectively with their employers. As pertinent to the issue presented here, a "public employer" subject to the Act's provisions is defined as "the state of Montana or any political subdivision thereof, ... and any representative or agent designated by the public employer to act in its interest in dealing with public employees." Section 59-1602(1), R.C.M. 1947. The Act further provides:

The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education (whether elected or appointed) or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

Section 59-1609, R.C.M. 1947 (emphasis added).

When these two sections are read together, it is clear that the state of Montana is the "public employer" of employees within the executive branch of government. Furthermore, the Legislature plainly intended that the governor, as chief executive officer, or his designee, should represent all agencies of the executive branch in the collective bargaining process. See Montana Constitution, Art. VI, section 4; section 82A-105, R.C.M. 1947. The question remains, however, whether this statutory denomination of the governor as negotiating representative is constitutionally permissible as it applies to constitutional agencies within the executive branch.

Article VI, section 1(1), of the Montana Constitution provides for an executive branch composed of a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction and auditor. Each of these officers, except the team of governor and lieutenant governor, is elected individually at a general election, Montana Constitution, Art. VI, section 2; by constitutional provision and the electoral process, therefore, each is essentially independent of the other officers in the executive branch.

Section 7 of Article VI further establishes the structuralization of the executive branch by providing that all administrative and executive agencies are to be organized into not more than twenty departments. These departments are speci-

fically made subject to direct supervision by the governor, their head executives being appointed by him, rather than elected. Montana Constitution, Art. VI, section 8. Article VI, section 7, however, specifically excludes the offices of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor from its organizational scheme; this exclusion likewise exempts these constitutional agencies of the executive branch from section 8's provision for control by the governor. Within the framework of Montana's Constitution, therefore, each explicitly established executive office constitutes an independent agency, able to make its own policy determinations and answerable ultimately only to the people of Montana.

The Legislature itself has recognized the independent status of constitutional executive agencies in the Executive Reorganization Act, Title 82A of the Revised Codes of Montana 1947. Section 82A-105, R.C.M. 1947, specifically limits the governor's policy-making and supervisory powers to the executive departments established by the Act. Consistent with the framework of the Constitution, the constitutional offices of the executive branch are excluded from the provision concerning gubernatorial control.

Article II of the Montana Constitution and its implementing legislation require a separation of powers and functions within the executive branch of Montana's government. Those powers constitutionally vested in the separately elected executive officers and the authority to formulate policy necessary to effectuate those powers cannot be usurped by other officers of the executive branch. However, the Governor is constitutionally endowed with the executive power of the state and such duties as are provided by law. Montana Constitution, Art. VI, section 4. He is thereby implicitly empowered to perform any administrative duties necessary to the efficient and coordinated functioning of the executive branch. His executive duties may also be explicitly delineated by the Legislature so long as there is no consequent interference with the powers constitutionally granted to the other executive officers.

The Legislature has protected the constitutional powers of the elected state officials under the collective bargaining act since that act does not apply to personnel who have authority to act for the agency on matters relating to the implementation of agency policy. Section 59-1602(2), (4), R.C.M. 1947. Clearly the policy making and executive staffs of the elected officials are not covered by the act.

In an analogous way the Legislature has protected the constitutional prerogatives of the elected officials with regard to the State Classification and Pay Plan by designation of certain personal and policy making staff of elected officials for exemption from the classification and pay plan. Under section 59-904(10), R.C.M. 1947, specific provisions of chapter 9 of Title 59 do not apply to the personal staff of elected officials. Likewise chapter 9 does not cover the elected official, his chief deputy or executive secretary.

In view of the foregoing I see no invasion of the constitutional prerogatives of the elected state officials by the provision of section 59-1609 that the Governor is the collective bargaining representative for the State of Montana. This requirement imposes upon the governor, as chief executive officer of the state, the administrative duty of negotiating with public employee unions for the agencies within his branch. Section 59-1609, then, comports with the constitutional scheme of Montana's executive branch; it charges the governor with a specific responsibility in his administration and coordination of that branch, but does not interfere with the constitutional powers and policy-making prerogatives of the separate and independent executive officers.

THEREFORE, IT IS MY OPINION:

The governor or his designee has the statutory authority to represent all agencies of the executive branch for purposes of collective bargaining with public employee unions.

Very truly yours,

MIKE GREELY
Attorney General