



Montana Legislative Services Division
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June 24, 2011

To: Economic Affairs Interim Committee

From: Bart Campbell, Staff Attorney

Re: Authority of governor to establish a health care exchange by executive order

ISSUE: May the governor create a health care exchange by executive order?

ANSWER: The powers and duties of the governor must be specifically set out in the Montana constitution or in statute. Without specific statutory authority the governor may not establish a health care exchange by executive order.

DISCUSSION: Section 4(1), Article VI, of the Montana constitution provides: "(1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law." Additional powers and duties of the governor are set out in 2-15-201, MCA. 2-15-201(12) provides: "(12) The governor has the other powers and shall perform the other duties that are devolved upon the governor by this section or any other law of this state."

There are no cases interpreting the two sections referred to above. However, the two sections seem clear in their language. A reasonable reading of the two sections is that a duty cannot be imposed or a power granted with respect to the Governor in the absence of specific statutory language.

There is one attorney general's opinion (37 A.G. Op. 168, 1978) pertaining to Section 4(1), Article VI, of the Montana constitution but it is not on point with respect to the issue addressed in this discussion. In that opinion the attorney general was asked whether the governor could represent all state agencies in collective bargaining negotiations. The attorney general stated that specific statutory language existed authorizing the governor to conduct the negotiations and went on to say the governor's : "executive duties may also be explicitly delineated by the Legislature so long as there is no consequent interference with the powers constitutionally granted to other executive officers." By analogy the attorney general's opinion may be applied to the present question in that the one could conclude that in the absence of statutory authority the attorney general would have found that the governor did not have the power to conduct the collective bargaining negotiations.

CONCLUSION: Any power granted or duty imposed with respect to the governor must be based upon specific statutory language and in the absence of statutory authority the governor may not establish a health care exchange by executive order.

Sincerely,

A handwritten signature in cursive script that reads "Bart Campbell". The signature is written in dark ink and is positioned above the typed name.

Bart Campbell
Staff Attorney

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