

MONTANA



CONSTITUTIONAL PROVISIONS

Blaine Amendment

“(1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination. (2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.” MONTANA CONST. Art. X, § 6.

Education Articles

“The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.” MONTANA CONST. Art. X, § 3.

“The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.” MONTANA CONST. Art. X, § 8.

EXISTING SCHOOL CHOICE PROGRAMS

Public School Choice: **Yes**

Interdistrict/voluntary
Montana Code Annotated Sections 20-5-320, 20-5-322 to 20-5-324
Interdistrict/mandatory
Montana Code Annotated Sections 20-5-321 to 20-5-324

Charter Schools: **No**

Private School Choice: **No**

RELEVANT CASE LAW

Montana State Welfare Board v. Lutheran Social Services, 480 P.2d 181, 186 (Mont. 1971)

The Montana Supreme Court held that “payment of public assistance to indigent expectant mothers is not an unconstitutional ‘appropriation,’ ‘loan,’ ‘donation,’ or ‘grant’ in violation of the Montana Constitution, simply because such persons may request the counseling and assistance of [religious] private adoption agencies.” The court went further and held that “[i]n no way do we find that [religious] private adoption agencies are directly or indirectly benefited by payments to or on behalf of a qualified recipient, nor have they ever received such funds.”

State ex rel. Chambers v. School District, 472 P.2d 1013 (Mont. 1970)

The Montana Supreme Court held that a special tax to pay for teachers at a local Catholic school violates the explicit terms of Article IX, Section 8 (the predecessor of the current Blaine Amendment, Article X, Section 6) because it uses public money to aid a sectarian school by paying for its teachers.

ANALYSIS AND RECOMMENDATIONS

Both tax credit and voucher programs are school choice options for Montana. The state Constitution contains a Blaine Amendment on which the Montana Supreme Court premised its 1970 decision striking down a special tax for generating funds to pay teachers in private schools, which, unlike school choice programs, constitutes a direct appropriation to private schools. The Amendment has received little subsequent attention. The Montana Supreme Court showed an inclination in *Montana State Welfare Board v. Lutheran Social Services* to recognize a distinction between aiding students and aiding the schools they choose to attend.

Model Legislation: Parental Choice Scholarship Program (Universal Eligibility), Parental Choice Scholarship Program (Means-Tested Eligibility), Special Needs Scholarship Program, Foster Child Scholarship Program, Autism Scholarship, Great Schools Tax Credit Program, Family Education Tax Credit Program