

**LEGAL ASPECTS OF INDIAN EDUCATION IN MONTANA**

Presented at the “Montana Indian Education Laws and Legal Issues” Conference  
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**I. Federal Government: Indian education in Montana is a specific and general trust obligation, originally incurred as consideration for land ceded under treaties and allotment acts, and affirmed through successive federal statutory enactments.**

A. Treaties and Executive Orders

1. *Treaty with the Blackfoot Indians*, Oct. 17, 1855, 11 Stat. 657.

ARTICLE 10. The United States further agree to expend annually, for the benefit of the aforesaid tribes of the Blackfoot nation, a sum not exceeding \$15,000 annually, for ten years, in establishing and instructing them in agricultural and mechanical pursuits, and in educating their children, and in any other respect promoting their civilization and christianization.

2. *Treaty with the Flatheads*, July 16, 1855, 12 Stat. 975.

ARTICLE 5. The United States further agree to establish at suitable points within said reservation, within one year after the ratification hereof, an agricultural and industrial school, erecting the necessary buildings, keeping the same in repair, and providing it with furniture, books, and stationery [sic], to be located at the agency, and to be free to the children of the said tribes, and to employ a suitable instructor or instructors.

3. *Treaty with the Crow Indians*, May 7, 1868, 15 Stat. 649

ARTICLE 7. In order to insure the civilization of the tribe entering into this treaty, the necessity of education is admitted, especially by such of them as are, or may be, settled on said agricultural reservation; and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children, between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher, competent to teach the elementary branches of an English education, shall be furnished . . . The provisions of this article to continue for twenty years.

4. *Treaty with the Northern Cheyenne and Northern Arapaho*, May 10, 1868, 15 Stat. 655.

ARTICLE 4. In order to insure the civilization of the tribe entering into this treaty, the necessity of education is admitted, especially by such of them as are or may be settled on said agricultural reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with, and the United States agrees that for every thirty children, between said ages, who can be induced or compelled to attend school, a house shall be provided, and a teacher . . . shall be furnished . . . . The provisions of this article to continue for twenty years.

5. *Act to Ratify and Confirm an Agreement with the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indians in Montana, and for other purposes*, May 1, 1888, 25 Stat. 113.

ARTICLE 3. In consideration of the foregoing cession and relinquishment the United States hereby agrees to advance and expend annually, for the period of ten years after the ratification of this agreement, under the direction of the Secretary of the Interior, for the Indians . . . at the Fort Peck Agency, \$165,000; for the Indians . . . at the Fort Belknap Agency, \$115,000, and for the Indians . . . at the Blackfeet Agency, \$150,000 . . . in the education of Indian children . . . [and] in the erection of such new agency and school buildings . . . as may be necessary . . . to promote their civilization, comfort and improvement.

6. Northern Cheyenne 1884 Executive Order

7. Rocky Boy’s 1916 Executive Order

B. Allotment/Homesteading

1. *The Indian General Allotment Act*, February 8, 1887, 24 Stat. 338, 25 U.S.C.A. § 331 et seq. (2003). Reservations opened up to non-Indian settlement through allotment.

SECTION 5. [A]ll lands adapted to agriculture . . . sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers . . . subject to grants which Congress may make in aid of education.

2. Allotment Process in Montana – Blackfeet Example, 59<sup>th</sup> Cong., Sess. II, Ch. 2285, 1907, 34 Stat. 1035.

Under Blackfeet allotment act: (1) trust land was reserved from allotment for schools for Indians, (2) lands were granted to the State of Montana for education purposes, but not in fee simple absolute, and (3) profits from the sale of these lands were put into a Treasury account for the benefit of the Blackfeet, to fund, amongst other things, the education of Blackfeet children:

[T]he Secretary of the Interior is hereby authorized and directed to immediately cause to be surveyed [for disposal under General Allotment, homestead, mineral and townsite laws] all of the lands embraced within the limits of the Blackfeet Indian Reservation, in the State of Montana . . . . *Provided* . . . that the Secretary of the Interior may reserve [from allotment] such lands as he may deem necessary for agency, school, and religious purposes, to remain reserved so long as needed and so long as agency, school, or religious institutions are maintained thereon for the benefit of the Indians . . . .

[and excepting from allotment] section sixteen and thirty-six of each township, or any part thereof, for which the State of Montana has not heretofore received indemnity lands under existing laws, which sections, or parts thereof, are hereby granted to the State of Montana for school purposes. And in case either of said sections or parts thereof is lost to the State of Montana by reason of allotment thereof to any Indian or Indians, or otherwise, the governor of said State, with the approval of the Secretary of the Interior, is hereby authorized to select other lands not occupied or reserved within said reservation, not exceeding two sections in any one township, which selections shall be made prior to the opening of the land to settlement. . . .

That after deducting the expenses . . . of the sale of lands . . . including the cost of survey and said lands, the balance realized from the proceeds of the sale of the lands . . . shall be paid to the Treasury of the United States and place to the credit of said Indian tribe. . . . [and] shall be expended from time to time by the Secretary of the Interior . . . in their education and civilization. . . .

That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$65,000, or so much thereof as may be necessary, to pay for the lands granted to the State of Montana and for lands reserved for agency and school purposes, at the rate of \$1.25 per acre. . . .

That the Secretary of the Interior is hereby authorized and directed to reserve and set aside for town-site purposes, and to survey, lay out, and plat into town lots, streets, alleys, and parks, not less than eighty acres of said land at or near the present settlements of Browning and Babb . . . .

3. Minerals underlying all lands within reservation, regardless of status, later reserved for the Blackfeet, and all lands within reservation, regardless of status, made subject to alcohol prohibition, 66<sup>th</sup> Cong., Sess. I, Ch. 4, 1919, 41 Stat. 16.
4. Crow allotment act of 1920 specifically reserves mineral rights under lands granted to the State of Montana for education purposes, and states, “That the Crow Indian children shall be permitted to attend the public schools of said State on the same condition as the children of white citizens of said State.” 66<sup>th</sup> Cong., Sess. II, Chs, 224, 225, 1920.

C. Important Federal Indian Education Statutes

1. *Conveyance of school properties to local school districts or public agencies.* June 4, 1952, 67 Stat. 41; May 16, 1957, 71 Stat. 29; March 16, 1962, 76 Stat. 33. 25 U.S.C.A. § 293a (2003):

The Secretary of the Interior . . . is authorized to convey to State or local governmental agencies or to local school authorities all the right, title, and interest of the United States in any land and improvements thereon and personal property used in connection therewith heretofore or hereafter used for Federal Indian school purposes and no longer needed for such purposes: Provided, That the consent of the beneficial owner shall be obtained before the conveyance of title to land held by the United States in trust for an individual Indian or Indian tribes: Provided further . . . Any conveyance under this section shall reserve all mineral deposits . . . [and] shall require the property to be used for school or other public purposes, and shall require the property to be available to Indians and non-Indians on the same terms . . . . If at any time the Secretary . . . determines that the grantee of any such lands, . . . has failed to observe the provisions of the transfer agreement and that the failure has continued for at least on year, he may declare a forfeiture of the conveyance and the title conveyed shall thereupon revert to the United States. . . . the former beneficial owner . . . may petition the United States District Court for the district where the land is located to declare a forfeiture of the conveyance and to vest the title in the United States, in the same trust status as previously existed.

2. *Johnson-O’Malley Act,* April 16, 1934, 48 Stat. 596; June 4, 1936, 49 Stat. 1458. 25 U.S.C.A. §452 et seq. (2003).

Section 452 of the Act authorizes the Secretary to enter in contracts with any State (including political subdivisions and schools), for the education of Indians in the State. Section 455 of the Act requires the prospective contractor to submit to the Secretary an education plan for the Indian students sought to be served. Before the contract is awarded the Secretary must approve of the plan. Section 456 of the Act provides for the formation of local committees of Indian parents in those state school districts have school board composed of a non-Indian majority. These committees are empowered to approve or disapprove of programs to be conducted under proposed contract. If a local school board impedes the Indian parent committees, the Secretary may revoke the contract.

3. *Impact Aid*, originally enacted as PL 81-874, 64 Stat. 967, 1950 (popularly known as “874” funding); PL 81-815, 64 Stat. 1100, 1950, now codified as part of *No Child Left Behind Act of 2002*, 20 U.S.C.A. 7701 et seq. (2003):

In order to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children in a manner that promotes control by local educational agencies with little or no Federal or State involvement, because certain activities of the Federal Government, such as activities to fulfill the responsibilities of the Federal Government with respect to Indian tribes . . . place a financial burden on the local educational agencies servicing areas where such activities are carried out, and to help such children meet challenging State standards, it is the purpose of this subchapter to provide financial assistance to local agencies . . .

Section 7704 of the Act sets forth policies relating to children residing on Indian lands. The section provides that Indian parents have the opportunity to present their views with regard to school programs, and provides a hearing mechanism for tribal government complaints against schools receiving impact aid funding.

4. *Indian Self-Determination and Education Assistance Act*, January 4, 1975, 88 Stat. 2203. 25 U.S.C.A. §450 et seq. (2003).

Section 450a, the Congressional declaration of policy, states, “The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational . . . services to Indian communities so as to render such services more responsive to the needs and desires of those communities. . . . The Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole . . . .” The ISDEAA requires the BIA, upon demand by tribal governments, to contract to such tribes the operation of any service the BIA provides to the tribes. The ISDEAA amended *Johnson O’Malley* to increase Indian control of programs contracted to local educational agencies (Indian parent committees). Under Section 458 of the Act, the Secretary is authorized to enter into contracts with State education agencies and districts for the construction, acquisition or renovation of facilities on or near a reservation, for the education of the Indian students of that reservation. Section 458bbb of the Act establishes the American Indian Education Foundation.

5. *Title XI of the Education Amendments Act of 1978*, as amended by the *Native American Education Improvement Act of 2001*. PL 95-561, Title XI, §1120, as added PL 107-110, Title X, §1042, Jan. 8, 2002, 115 Stat. 2007. 25 U.S.C.A. §2000 et seq. (2003). This Act is directed at improving BIA-funded school systems. Section 2000 of the Act, the Declaration of Policy, states: Congress declares that the Federal Government has the sole responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that it has established on or near Indian reservations and Indian trust lands throughout the Nation for Indian children. It is the policy of the United States to fulfill the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian peoples for the education of Indian children and for the operation and financial support of the BIA-funded school system to work in full cooperation with tribes toward ensuring that the programs of the BIA-funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of those children.

Under Section 2020 of the Act, the Secretary may make grants for the development of tribal education departments (facilitate tribal control of education on the rez; coordinate tribal, federal, state and other educational programs; developing tribal educational codes). 25 U.S.C.A. §2020.

6. *Tribally Controlled College or University Assistance Act*, 25 U.S.C.A. §1801 et seq. (2003).

Provides for grants to tribally controlled colleges and universities.

7. *Tribally Controlled School Grants Act*, 25 U.S.C.A. §2501 et seq. (2003).

Provides grants to tribally controlled schools. The Declaration of Policy states, “Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. . .”

8. *Native American Languages Act*, 25 U.S.C.A. §2901 et seq. (2003).

A policy statement and grant program to preserve, protect and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages. The Act encourages State and local educational institutions to work with Indian tribes and parents in implementing the federal policy of ensuring the survival of Indian languages. Prohibits any restrictions on the use of Indian languages in publicly supported education programs.

9. *No Child Left Behind, Title VII, Indian, Native Hawaiian, and Alaska Native Education*, 20 U.S.C.A. §7401 et seq. (2003).

“It is the policy of the United States to fulfill the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children. The Federal Government will continue to work with local education agencies, Indian tribes and organizations, and other entities toward the goal of ensuring that programs that serve Indian children are of the highest quality and provide for not only the basic elementary and secondary educational needs, but also the unique educational and culturally related academic needs of these children.” Under Section 7424 grant to local educational entities must have a comprehensive program to meet the needs of Indian children.

#### D. Some Important Federal Case Law

1. *Reuben Quick Bear v. Leupp*, 28 S.Ct. 690 (1908).

Federal appropriations to satisfy tribal trust or treaty obligations are free from U.S. Constitutional Establishment Clause restrictions. Such funds are, essentially, the tribe’s money and therefore can be used to, for example, fund a school in which Indian religion is taught. Direct, general tax allocations for Indian education, that cannot be considered treaty or trust funds, are subject to Constitutional restrictions.

2. *U.S. v. White Mountain Apache Tribe*, 123 S.Ct. 1126 (2003).

A tribe is entitled to money damages under the Indian Tucker Act, for breach of the federal government’s trust obligation to maintain land and improvements held in trust for the tribe pursuant to the *Theodore Roosevelt Indian School Act* of Jan. 24, 1923, 42 Stat. 1187, and pursuant to PL 86-392, 74 Stat. 8, 1960, and act to hold the former Fort Apache Military Reservation in trust for the tribe.

3. *Ramah Navajo School Bd. v. Bureau of Revenue of New Mexico*, 102 S.Ct. 3394 (1982).

Contractor building an Indian school, on the reservation, pursuant to agreement with an Indian school board, does not have to pay State taxes on the gross receipts received under

the agreement. The federal regulation of the construction and financing of Indian educational institutions is comprehensive and pervasive, and state tax attempt impeded federal obligations in area of Indian education.

4. *Meyers By and Through Meyers v. Board of Educ. of San Juan School*, 905 F.Supp. 1544 (D.Utah 1995).

In this case, Navajo school children and their parents sued a state school district to provide secondary school facilities in a remote area of the Navajo reservation. The district court held that (1) the state school district had a duty to educate the children under the Utah constitution that was not preempted by federal law, because the U.S. had not stepped into provide the education which state school district was not providing; (2) that the U.S. had a treaty and statutory obligation to educate the Navajo, and that this duty exists independently as a general trust obligation so long as federal statutes and regulations recognize the federal obligation for Indian education. Generally, “Congress intended the education of on-reservation Indians to be a cooperative effort among the federal government, states and local school boards, the Indian tribes and Indian parents. The fact that one entity may have a duty to educate on-reservation Indians does not excuse any other entity from fulfilling its own obligations.” 905 F.Supp. At 1568.

5. *Windy Boy v. Big Horn County*, 647 F.Supp. 1002 (D.Mont. 1986).

At-large system of elections for local school board of trustees violates the Voting Rights Act because it dilutes the Indian vote.

## II. State Government: Indian education a Montana State Constitutional obligation.

### A. 1972 Montana Constitution

1. *Article X, 1(2)*.

(1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state. (2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

2. *Article X, 7*.

No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

3. *Article XI, 7*.

(1) Unless prohibited by law or charter, a local government unit may (a) cooperate in the exercise of any function, power, or responsibility with, (b) share the services of any officer or facilities with, (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.

B. Statutes1. *MCA 20-1-501*. Recognition of American Indian cultural heritage – legislative intent.

(1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage. (2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution: (a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and (b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments. (3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel proved means by which school personnel will gain an understanding of and appreciation for the American Indian people.

2. *MCA 20-1-502*. American Indian studies – definitions.

As used in this part, the following definitions apply: (1) “American Indian studies” means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana. (2) “Instruction” means: (1) a formal course of study or class, developed with the advice and assistance of Indian people, that is offered separately or that is integrated into existing accreditation standards by a unit of the university system or by an accredited tribal community college located in Montana, including a teacher education program within the university system or a tribal community college located in Montana, or by the board of trustees of a school district; (b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts; (c) inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resource specialists; or (d) inservice training developed by professional education organizations or associations in cooperation with educators of Indian descent and made available to all certified and classified personnel.

3. *MCA 20-1-503*. Qualifications in Indian studies – trustees and noncertified personnel.

(1) The board of trustees for an elementary or secondary public school district may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies. Pursuant to Article X, section 8, of the Montana constitution, this requirement may be a local school district requirement with enforcement and administration solely the responsibility of the local board of trustees. (2) Members of boards of trustees and all noncertified personnel in public school districts are encouraged to satisfy the requirements for instruction in American Indian studies.

4. *MCA 20-5-108*.

It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district,

unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

5. *MCA 20-25-428*. Providing for state assistance to tribal community colleges.

6. *MCA 18-11-101. State-Tribal Cooperative Agreements Act.*

Act to promote cooperation between the State and tribal governments. Cooperative agreements must be approved by the state attorney general and submitted to the regional Department of Interior office. Agreements must be approved of by the governing body of each party to the agreement and cannot contradict federal law.

7. *MCA 90-11-102*. Establishes state coordinator of Indian affairs position.

8. Note also the development by the Board of Public Education of a Class 7 native language specialist certificate. Native language speakers can complete the program and obtain a Class 7 certification to teach native languages in public schools.

C. Montana Attorney General Opinions \*Language quoted directly from summaries contained in the Montana statutes, except *43 A.G. Op. 42 (1989)*.

1. *36 A.G. Op. 5 (1975)*.

An elementary school district composed entirely of property belonging to the North Harlem Hutterite Colony would be eligible to receive public money for school purposes without violating any provision of the 1972 Montana Constitution, provided the school remains under the authority, control, and operation of the public school system by public school personnel and open to all persons eligible to attend this public school.

2. *39 A.G. Op. 11 (1981)*.

Prior to the 1979 amendments, MCA 20-4-213 (now repealed) absolutely required that teachers in schools on or near Indian reservations complete a course in American Indian studies. After amendment, the Indian studies requirement was no longer mandatory but rather became discretionary with the local school board. The Legislature provided that any Indian studies requirement must be a local district requirement with enforcement and administration solely the responsibility of the local board of trustees. Therefore, the State Board of Education did not have the authority to require that all certified teachers complete six inservice credits in Indian studies.

3. *43 A.G. Op. 42 (1989)*.

The Montana Human Rights Act applies to public school districts lying wholly or partially within Indian reservations on district-owned lands and prohibits the school district from granting employment preference to Indians unless specifically required by federal statute. Indian tribes do not have a federally-protected interest in requiring that such preferences be granted their members or other Indians.

Facts of this case:

- East Glacier School District, entirely within Blackfeet Reservation.
- State school is located “on lands owned by” the district.
- Roughly equal Indian and non-Indian student body.
- Funding for school from the State Foundation program; property tax levies; and federal impact aid.
- No mention of any JOM funding.

Legal reasoning:Morton v. Mancari, 417 U.S. 535 (1974).

- Inapplicable and does not apply to state action, implying that the tribal preference requirement is in fact equivalent to a state preference requirement.
- Racial preferences are illegal under state law, at least where they are not remedial devices designed to correct prior discriminatory practices by the employer. AG refuses to address whether the tribal preference requirement is in response to past discriminatory practices.

Montana v. U.S., 450 U.S. 544 (1981).

- Applies because the tribe is trying to regulate non-tribal entity operating on non-tribal lands. Applies Montana analysis and concludes that (1) there is no consensual or contractual relationship between the school district and the Blackfeet tribe (school is a creature of state statute and its presence on the rez is not contingent upon tribal approval); (2) school does not imperil the political integrity, economic security or the health and welfare of the tribe (discounts positive economic impact of hiring tribal members; discounts contrary federal law like Section 7(b) of the ISDEAA requiring Indian preference in contracting, and Title VII of the Equal Employment Opportunity Act, 42 U.S.C. §2000 et seq. which excludes from coverage of the act any business or enterprise **on or near** a reservation which give preferential treatment to Indian persons living on or near the reservation.
- Opinion is specific to its facts and assumes the property in question not held in trust for a specific purpose.

4. *43 A.G. Op. 23 (1989)*.

Montana’s nepotism statues apply to members of public school boards for districts lying wholly or partially within an Indian reservation. Criminal prosecution of Indian members for nepotism law violations with respect to decisions made and implemented wholly on-reservation may be initiated only in federal court by the United States pursuant to 18 U.S.C. 13, except for violations occurring on the Flathead Indian Reservation. Furthermore, contracts entered into in contravention of the nepotism statutes are voidable.

D. Case Law1. *Helena School District v. State*, 769 P.2d 684 (S.Ct. Mont. 1989).

The Montana Supreme Court held that Article X, 1(2) “establishes a special burden in Montana for the education of American Indian children which must be addressed as a part of the school funding issues.” The State, therefore, may factor 874 funding into its budgets and equalization formula only after it has met federal equalization standards.

2. *State v. Shook*, 67 P.3d 863 (S.Ct. Mont. 2002).

The Montana Supreme Court here upholds the ability of the State Fish, Wildlife and Parks Commission to promulgate a regulation forbidding all non-Indian big game hunting within the exterior boundaries of reservations in the state. A non-Indian, who shot a deer on non-Indian lands, though not her own land, on the Flathead Reservation, challenged the regulation as a violation of equal protection.

Legal reasoning:

- Under Morton v. Mancari, 417 U.S. 535 (1974), Indian preference legislation dealing with tribes as political entities is not an unconstitutional classification, because the preference is political rather than racial in nature. Federal Indian laws regarding the rights of Indians bind the state. Therefore, the state equal protection guarantee . . . must allow for state classifications based on tribal membership if those classifications can rationally be tied to the fulfillment of the unique federal, and consequent state, obligation toward Indians, citing *Art. X, 1(2) Mont. Const.*
- State regulation of non-Indian big game hunting on the Flathead Reservation must not eviscerate federally-protect treaty hunting rights.
- Cites *State ex rel. Greely v. Confederated Salish & Kootenai Tribes*, 712 P.2d 754 (S.Ct. Mont. 1985), for the proposition that state courts must recognize and follow federal law regarding Indian rights. Federal law is supreme on matters related to treaties.

### III. Tribal: Education of tribal members a tribal governmental obligation and an aspect of inherent tribal sovereignty.

- A. Tribal Elementary/Secondary Schools in Montana – BIA funded, tribally controlled
  1. Two Eagle River School, Pablo
  2. Northern Cheyenne Tribal Schools, Busby
- B. Tribal Community Colleges
  1. All reservations in the state have tribally run community colleges.
- C. Tribal Education Codes
  1. Only Fort Peck has an adopted Tribal Education Code. Most other tribes in the state are in the process of developing education codes. The Fort Peck Tribal Education Code:
    - recognizes inherent tribal authority over formal education on the reservation;
    - mandates that the tribal government develop cooperative working relationships with the state and federal governments to improve all education systems operating within the reservation;
    - sets up a tribal education department with authority to develop an education curriculum, which includes instruction in the Dakota and Nakoda languages. The Director of the tribal education department must meet with, inspect and evaluate local schools for the purpose of communicating the tribal code to school boards and educators, and ensuring its implementation;
    - mandates the cooperation of local school boards with the tribal education department. School boards are to include the department in all aspects of curriculum and policy development. Indian parents and community members must be involved with all local school governing bodies; and
    - mandates Indian preference at local schools and other educational institutions.