



ADMINISTRATIVE LAW FOR LEGISLATORS

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What is Administrative Law?

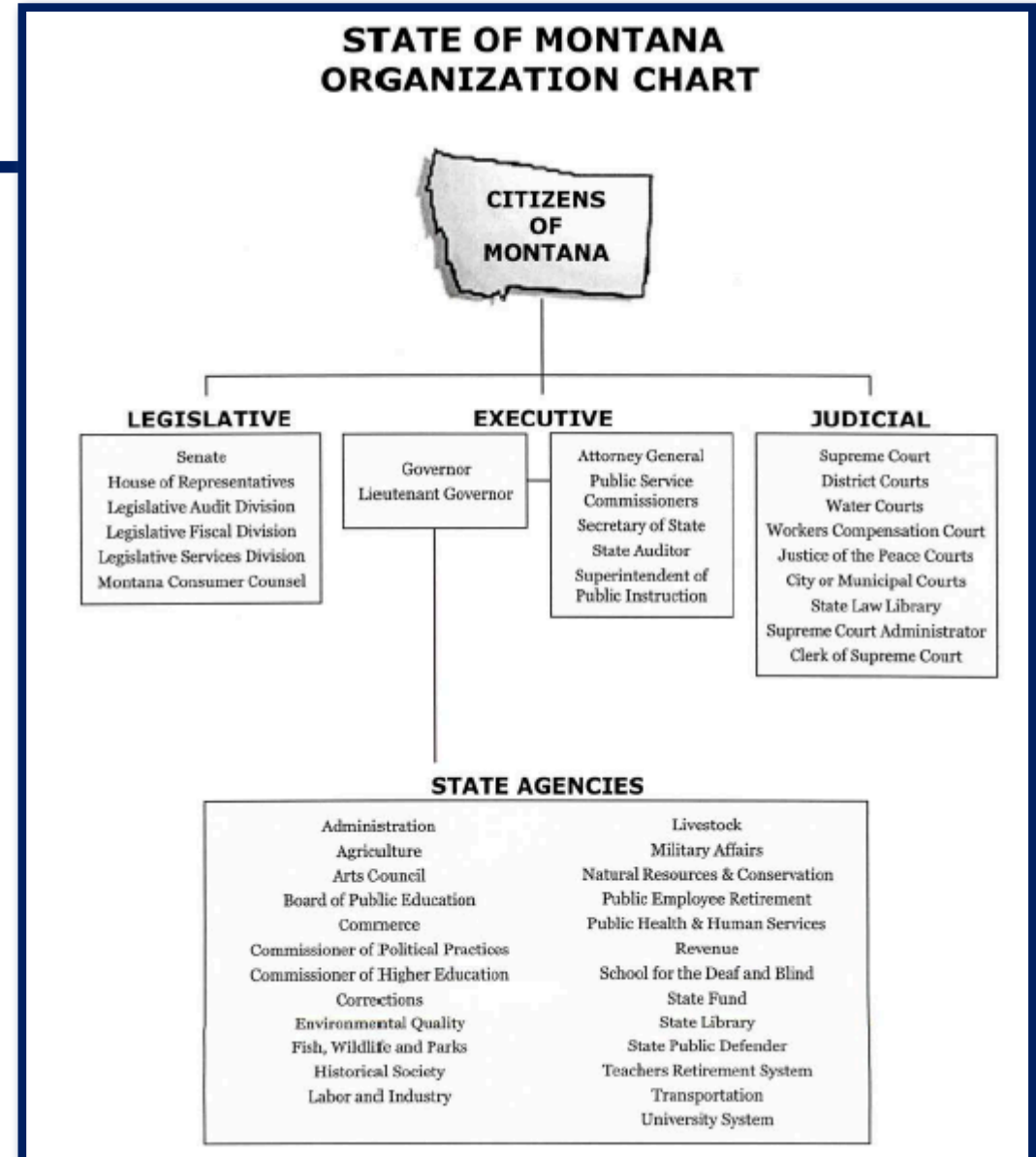


- Administrative Law is the body of law that governs federal and state agencies.
- In a positive sense, it is the law that breathes life into the Legislature's intent expressed in statute.
- In another sense, it is the limits placed on the powers and actions of administrative agencies.



Agencies' Powers

- Typically, agencies in the federal and state governments are granted powers that are characteristic of each of the branches of government.
 - Some agencies have authority to issue rules that control behavior and assess penalties for violation of these rules;
 - Some have authority to investigate potential violations of rules; and
 - Some have authority to adjudicate disputes between or among parties.



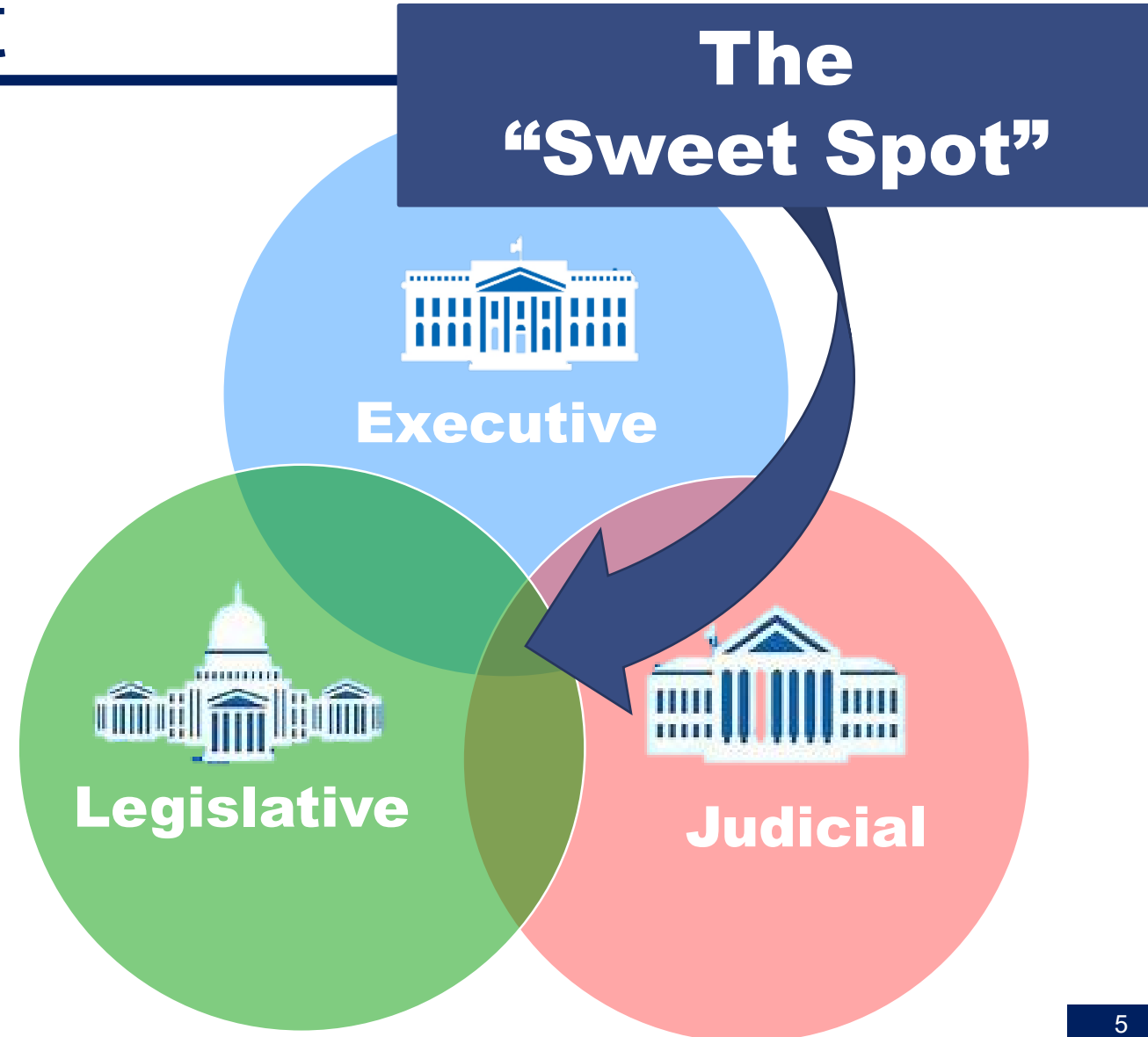
Why have these Delegations of Power Occurred?

- Expertise and knowledge in the agencies
- Flexibility to address change
- Consistency and predictability



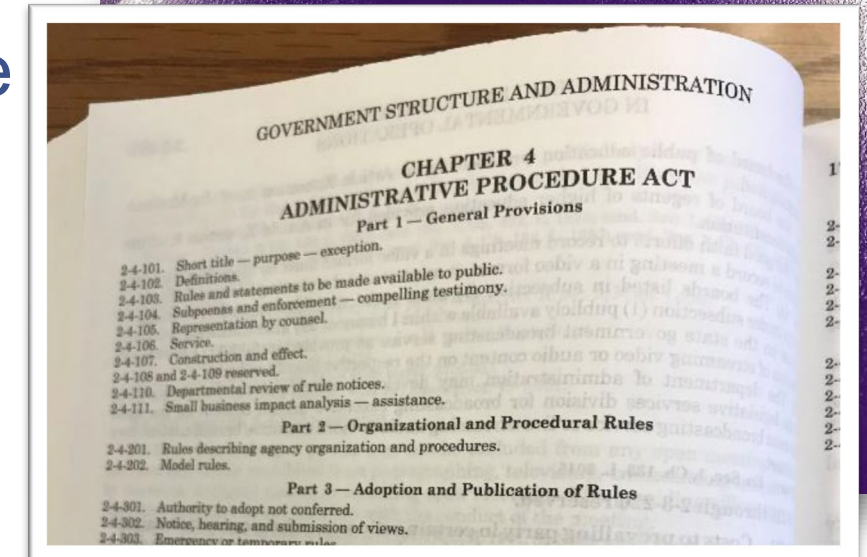
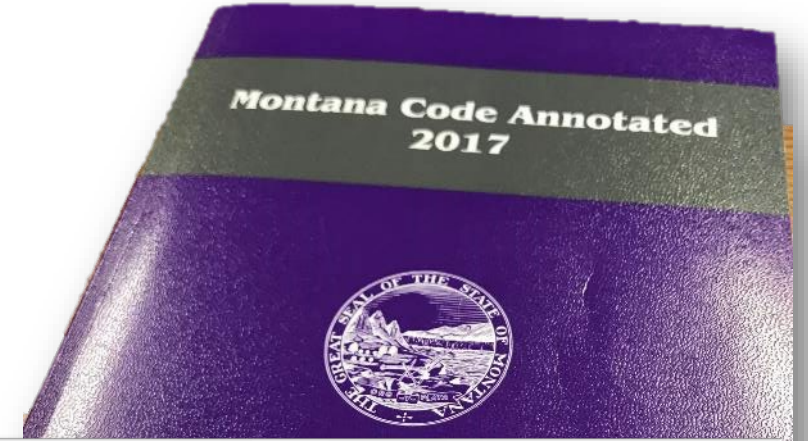
Finding the Sweet Spot

The challenge is to find the “Sweet Spot” between utilizing these agency advantages and honoring the constitutional distribution of power – called **Separation of Powers** – among the legislative, executive, and judicial branches.



Montana Administrative Procedure Act (MAPA)

- One of the ways to achieve this workable balance is to adopt an “Administrative Procedure Act,” which outlines defined duties and responsibilities for agencies.
- The federal government has adopted the **Administrative Procedure Act** and Montana has adopted the **Montana Administrative Procedure Act**.
 - (Title 2, Chapter 4, MCA)



Montana Administrative Procedure Act (MAPA)

- The express purposes of MAPA are:
 - Give notice to the public of government action and to provide for public participation in that action;
 - Establish due process safeguards in rulemaking, legislative review of rules, and contested cases;
 - Provide standards for judicial review of rules; and
 - Give statutory directives to executive and judicial branches.



Legislature's Role in Rulemaking

- In a statute, the Legislature authorizes an agency to make rules.
- Typically, the rule instruction in the statute is something like this:
 - “The Department shall adopt rules necessary to carry out the intent and purposes of this chapter.”
 - or*
 - “In particular, the Board shall adopt rules concerning the authorization of new banks under the laws of the state. Rules must contain minimum standards under which an application for a new bank must be determined, including the following...”



Legislature's Role in Rulemaking

- Once the agency drafts the rule, a lawyer for Legislative Services will review the rule and report on the rule to the committee that oversees that agency.
- If a rule(s) implements legislation, the agency must obtain the legislator's comments when beginning work on the substantive content and wording of the rule(s).



What Have Courts Said about Delegation of Rulemaking Authority?

- The Legislature must provide sufficient statutory standards and criteria to guide the agency. In re Gate City Savings and Loan Association (1979).
- Generally, agencies appreciate clear, succinct guidance because there is less room to misinterpret the Legislature's intent.
- On the flip side, the Legislature may not interfere with the Executive Branch in carrying out the law.
 - e.g., making specific staffing or resource allocation decisions

