



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

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STATE OF IDAHO

January 20, 2012

The Honorable Ben Yursa
Idaho Secretary of State
Statehouse
VIA HAND DELIVERY

Re: Removal of Commissioners Appointed to the Idaho Commission for
Reapportionment – Our File No. 12-39400

Dear Secretary of State Yursa:

This letter is in response to your recent inquiry of this office regarding the removal of commissioners appointed to the Idaho Commission for Reapportionment. As outlined below, no mechanism exists for the removal of a Commissioner once appointed. A vacancy can occur if a Commissioner resigns.

Pursuant To Order Of The Idaho Supreme Court, The Commission For Reapportionment Is Reconvened.

On January 18, 2012, the Idaho Supreme Court struck down Idaho Legislative Reapportionment Plan L 87. The Court ordered the Commission to be reconvened under Idaho Code § 72-1501(2) to revise Plan L 87. *Twin Falls County v. Idaho Commission on Redistricting*, p. 8, January 18, 2012. Since the Commission is being reconvened, there is no opportunity for an appointment or reappointment of members. The members of the Commission for Reapportionment, which adopted Plan L 87 are reconvened. The question then becomes whether a member of the Commission may be removed by the appointing authority.

No Provision For Removal Of A Commissioner With Or Without Cause Exists.

Idaho Code § 72-1502 sets forth generally method and criteria for appointment. This provision expands on Article III, §2's creation of the Commission through the appoint of

members. Importantly, no language indicating the ability of the appointing authority to remove a Commissioner is present in either Article III, § 2 or Idaho Code § 72-1502. Absent authority for removal by the appointing authority, it appears that a vacancy can occur only in specific circumstances. Clearly, a member could resign from office, a death in office, forfeiture of the office, or conviction of an infamous crime/ public offense involving the violation of the oath of office. Idaho Code § 59-901. This provision does reference removal of office, but that could only be applied in situations where the appointing authority is provided with the ability to remove someone from office.

Both the Idaho Constitution and the Idaho Code provide instances in which an officer may be removed from office. For example, Article III, § 11 of the Idaho Constitution permits the expulsion of members “for good cause shown.” A similar constitutional body, the Idaho State Tax Commission (Article VII, § 12, Idaho Constitution) includes the following clause regarding appointments:

The state tax commission shall consist of four (4) members, not more than two (2) of whom shall belong to the same political party. The members of the state tax commission shall be appointed by the governor, by and with the consent of the senate; and **shall be subject to removal by impeachment as provided in chapter 40, title 19, Idaho Code.**

Idaho Code § 63-101(5) (emphasis added). Another constitutionally created entity is the State Board of Education (Article IX, § 2, Idaho Constitution), which statutorily has the following provision indicating removal authority:

Removal of members -- Cause. **The governor is empowered to remove from membership on the state board any member** who has been proved guilty of gross immorality, malfeasance in office or incompetency, and shall fill the vacancy thus created by appointment as hereinbefore provided.

Idaho Code § 33-103 (emphasis added). No similar grant of authority or oversight is indicated in either Article III, § 2 or Idaho Code § 72-1502. Therefore, it does not appear that the appointing authority may remove a validly appointed and seated member of the Idaho Commission for Reapportionment.

Any Vacancy Must Be Recognized And Declared By The Idaho Secretary of State.

Idaho Code § 72-1502 requires that if a vacancy occurs during the tenure of the Commission, the Secretary of State must officially recognize such vacancy. Absent the removal authority of the appointment authority, the Secretary of State would determine whether to recognize such removal as the creation of a vacancy. If a claim is made that a member has been removed by the appointing authority, the above analysis indicates that

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such removal should not be recognized by the Secretary of State absent express removal authority.

This letter is provided to assist you. It represents an informal analysis of this office relying on the specific question and analysis raised herein. I hope that you find it of assistance. Please contact me if you would like to discuss the content of this letter in more depth.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Kane', written over a horizontal line.

BRIAN KANE

Assistant Chief Deputy

BK/tjn