

# Since when do politicians make their own laws?

**Marty Trillhaase/Lewiston Tribune**

Before they adjourned for the year, Idaho legislators made it clear they want to close the books on the Idaho Education Network scandal.

They even appropriated \$8 million to settle with the two contractors behind the ill-fated broadband service - CenturyLink and Education Networks of America.

"And it's no secret to anyone that there have been attempts to settle this lawsuit," House Speaker Scott Bedke, R-Oakley, told the budget committee last month. "Those attempts continue, but we're going to sine die. ... This gives us an ability to react to what we don't know, I guess, going down the road. I would remind the group that from day one, there was never going to be a good way out."

Lawmakers are sympathetic to contractors who delivered a service in good faith - before a district court judge, followed up by the Idaho Supreme Court, ruled the IEN contract itself null and void.

"It's egg on the face of the state, and I want it cleaned off," said budget committee co-Chairwoman Rep. Maxine Bell, R-Jerome. "In the end, it's about getting all of the schools broadband. One thing about us, after doing everything else, we can do the right thing."

But Idahoans don't need anything that even resembles a private, closed-door settlement involving their checkbook. There's been too much of that already.

This whole thing started when Gov. C.L. "Butch" Otter's pal and former Administration Director Mike Gwartney changed the rules in the middle of the bidding process and steered the \$60 million project toward CenturyLink and ENA, leaving low-bidder Syringa in the cold.

As the Spokesman-Review's Betsy Russell noted, CenturyLink has contributed \$35,000 to Otter's campaigns since 2006; ENA provided Otter with \$18,250.

The Idaho Supreme Court characterized Gwartney's action as having "corrupted the procurement process" and had the effect of replacing "side-by-side, end-to-end competing contracts" with a "non-competitive blended arrangement that left state users with no lower cost choice."

When Syringa sued, the Federal Communications Commission discontinued its e-rate dollars, which were supposed to cover three-quarters of the IEN's costs. Rather than alert lawmakers about the problem, Teresa Luna, Gwartney's successor as director of administration, kept that information to herself for months.

And rather than look for a way out, Luna continued to assure the public that everything would work out - until the day a district judge declared the IEN contract invalid.

At that point, lawmakers transferred the program to State Superintendent of Public Instruction Sherri Ybarra, who then delivered broadband at a significant savings by enabling schools to line up their own providers.

In February, a unanimous Supreme Court spelled out what should happen next. Either Luna's successor, Administration Director Bob Geddes, or Attorney General Lawrence Wasden is obligated to "seek repayment of the money advanced ... if repayment is refused or delayed."

The companies have received \$29.7 million and they want more. Each has filed tort claims against the state seeking millions for services delivered.

Geddes is on the fence: "He needs time to fully understand ramifications on both sides," Administration spokeswoman Diane Blume told the Associated Press last week.

Wasden, however, says he'll initiate a clawback lawsuit.

With good reason. You can't have a group of elected officials giving themselves the legal authority to say what is and is not a bogus contract. If nothing else, the state constitution bans using public funds "for any purpose not authorized by law, by any public officer. ... "

But the Supreme Court's directive is not an end. If the state files suit, the contractors would counter. And the question of whether the contractors get compensated - or how much - would be decided by a neutral judge. The public could see for itself what's going on - and be reassured an impartial third party is taking charge.

Could there be a more fitting closing chapter to a saga that's been so fraught with cronyism and stealth? - M.T.