

## **AP FACT CHECK: Disputes in AG fight sometimes off the mark**

BOISE, Idaho (AP) — Words matter when it comes to legal battles. But in the fight between Idaho lawmakers and Attorney General Lawrence Wasden, it can be difficult navigating the multiple verbal barbs that have been recently lodged at the state's top legal officer.

Gov. C.L. "Butch" Otter and lawmakers have expressed discontentment with Wasden from how his office is structured to his former legal advice over the past few months.

Here's a quick rundown of the claims so far.

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On who to blame for the illegally awarded statewide contract for broadband in public schools:

OTTER: "Time after time, the administrator was advised that that was legal, that he could actually bifurcate that contract."

**THE FACTS:** Otter says that Wasden's office signed off on the illegal \$60 million contract that set up broadband in public schools. In early March, the Idaho Supreme Court upheld a lower court's ruling that the state violated its own procurement laws when it amended the contract after it had been awarded.

And according to the court documents, Otter's claim doesn't add up.

In a 2010 affidavit of one of the attorneys involved in the lawsuit, Deputy Attorney General Melissa Vandenberg testified that she was not asked for advice on whether amending the contract was appropriate and nor was she asked to review the contract to see if the amendments complied with Idaho law.

"Prior to and during the creation of this amendment, I was not involved in any discussions regarding the division of labor," said Vandenberg, who has since left the attorney general's office.

Furthermore, the Idaho Supreme Court singled out Mike Gwartney, former head of the Department of Administration, in its recent decision as the key architect behind the illegal amendment.

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On whether state agencies or officials should be obligated to rely on representation by the Attorney General's office:

OTTER: "In my private life, when I go out and hire that attorney, that attorney works for me ... That is not the case the way we're structured right now."

**THE FACTS:** Otter is right. The state attorneys representing most public agencies do not work for the interest of one person.

Instead, those attorneys represent the best interest of the state.

It's a system that has saved taxpayers money, Wasden said, because the state lawyers are paid much less than the private sector. Additionally, the current system reduces costs because taxpayers aren't stuck paying two separate legal bills in the event state agencies square off in court.

But during Monday's press conference, Otter questioned the loyalty of the state attorneys in each agency. He welcomed the idea of scaling back Wasden's office to allow state agencies to hire their own legal counsel.

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On whether the Attorney General should remain part of the Idaho Land Board:

VANDER WOUDE: "It's just a mismatch, lot of conflicts of interest."

**THE FACTS:** House Majority Caucus Chair John Vander Woude says Wasden's involvement on the Idaho Land Board is full of conflicts of interests.

Wasden successfully sued the Land Board in 2010 alleging they violated the state constitution by setting rents below-market value on state-owned lakeshore lots. The move raised eyebrows after multiple lawmakers questioned Wasden being

privity to executive sessions on the board and being able to use that information in court.

The Idaho Supreme Court, however, said Wasden had standing to sue. The justices later agreed with Wasden that the board had violated the state constitution.

"When the (attorney general) files an action on behalf of the people or particular state clients, he is fundamentally different than other litigants before the Court and not easily shoehorned into a typical standing analysis," the justices wrote.

The five-member Land Board is made up of the governor, attorney general, state superintendent of public instruction and state controller. The board is in charge of managing Idaho's 2.5 million acres of endowment land to reap the highest long-term financial returns. The attorney general has been a member of the board since its inception and it would require a constitutional amendment to kick him off.

## **Tensions escalate between Idaho attorney general, lawmakers**

By KIMBERLEE KRUESI, Associated Press

BOISE, Idaho (AP) — Mounting tensions between Idaho lawmakers and the Attorney General's office have revealed a political power struggle over whether the state's elected officials should be able to pursue legal opinions that match their own interests.

Gov. C.L. "Butch" Otter announced on Monday that the office of Attorney General Lawrence Wasden needs to be scaled back and no longer be in charge of providing legal counsel to state agencies. Meanwhile, the Republican supermajority in the Idaho Legislature has found ways to funnel money for third-party legal opinions and has floated several legislative proposals directing Wasden's office on what to do.

"This is not an attack on the attorney general so much as it is frustration with the system," Otter said. "I would relish a change."

The attorney general's office represents the state in legal disputes and issues legal advice to state agencies and the Legislature. If lawmakers ignore that advice — which happens regularly — the attorney general is still required to defend and enforce those laws.

The job also has meant sometimes pitting himself against members of his own Republican Party. In 2010, Wasden successfully sued the Idaho Land Board alleging they violated the state Constitution by setting rents below-market value on state-owned lakeshore lots. The board is made up of Wasden, Otter and three other constitutional officers. House Majority Caucus Chair John Vander Woude floated a bill that would kick Wasden off the board. While it failed this year, the proposal was supported by other House leaders.

Wasden has maintained that most lawmakers, including Otter, have not talked to him about their concerns. Wasden also counters that the 20-year old system of having the state's chief legal officer represent most state agencies and commissions has saved the taxpayers millions of dollars. Before 1996, state agencies hired their own counsel, typically much more expensive than using state attorneys.

"Do voters want attorneys who will be cheerleaders for agencies or attorneys providing legal advice based on the rule of law?" Wasden asked.

As a constitutional officer, Wasden answers to voters and not the governor or Legislature. Lawmakers can limit Wasden's job by either drastically reducing state funding or going to private attorneys for legal counsel. However, stripping Wasden's powers requires a constitutional amendment.

Lawmakers and state officials are protected under client-attorney privileges, which can result in clients freely criticizing the attorney general's office even though neither Wasden nor his staff can freely respond.

According to the National Association of Attorneys General, the seat sits at the "intersection of law and public policy." Under Wasden's tenure, that has meant devoting resources on issues like prosecuting Internet crimes against children, championing access to public records and consumer protection.

Wasden also came under fire for refusing to sign a waiver to allow a shipment of spent fuel rods to be sent to the Idaho National Laboratory. Wasden argues that the U.S. Department of Energy missed one of its cleanup deadlines.

This year, Rep. Jeff Thompson, R-Idaho Falls, introduced a non-binding resolution urging Wasden to sign the waiver. The resolution passed with minimal opposition in the House.

"I can't predict when someone is going to introduce a resolution in a House committee that (passes) without a hearing. I can't predict what someone might say at a press conference. I can't predict when someone might introduce a constitutional amendment to take me off the Land Board. I really can't predict those things, but I certainly stand ready to have those conversations," Wasden said.

The political power struggle shows no sign of stopping as lawmakers have vowed to renew their efforts in next year's legislative session.

Right before adjourning for the year, Senate Majority Leader Bart Davis announced on the Senate floor that he was relinquishing holding the attorney general's budget as hostage after refusing to allow lawmakers to vote on it for more than a week.

His reasoning? It was too late to make any systematic changes to the office. However, Davis vowed to come back next year with a proposal that would see big changes in 2017.