

EXPLANATION OF DUTIES AND RESPONSIBILITIES

REPORTING VIOLATIONS OF STATE LAW BY COUNTY OFFICIALS HOLDING ELECTIVE OFFICE PURSUANT TO IDAHO CODE § 31-2002

An on-line form for reporting violations of state law by county officers holding elective office is provided on the Idaho Attorney General's website. Before proceeding to the form, it is important that you read all of the following sections carefully. They contain an explanation of the Attorney General's responsibilities in responding to complaints of violations. This will assist you in filling out the form and it will assist our office in processing your complaint.

Idaho Code § 31-2002:

County Prosecuting Attorneys and the County Sheriffs have primary responsibility for enforcing Idaho laws at the county level. As a rule, the Office of Attorney General has investigated and prosecuted cases at the county level only in limited circumstances, when a statute grants the Attorney General concurrent jurisdiction or where local authorities request assistance for a specific case. The Attorney General continues to assist local authorities in this manner.

In 2014, the Idaho Legislature enacted Senate Bill 1369, which gave the Attorney General additional responsibility and duty of investigating violations of state law by county officers who hold elective office. Senate Bill 1369 became effective July 1, 2014 as Idaho Code § 31-2002.

Idaho Code § 31-2002 authorizes the Attorney General to conduct “**a preliminary investigation of any allegation of a violation of state law, criminal or civil, against a county officer occupying an elective office for violation of state law in his official capacity.**” Idaho Code § 31-2002(1). Upon completion of the preliminary investigation, the Attorney General may do one of three things:

- (a) Issue a finding that no further action is necessary;
- (b) Prescribe training or other non-judicial remedies that do not involve the filing of criminal charges or a civil action;
- (c) Issue a finding that further investigation or prosecution is warranted.

Idaho Code § 31-2002(2)(a) – (c). If the Attorney General finds that further investigation or prosecution is warranted, he must refer the matter back to the County Prosecuting Attorney, who, in turn, must seek appointment of a special prosecutor. If the subject of the investigation is the County Prosecuting Attorney, the Attorney General shall act as special prosecutor. Idaho Code § 31-2002(c).

County Officers Holding Elective Office:

Idaho Code § 31-2002 applies to allegations involving “a county officer occupying an elective

office.” County officers who occupy an elective office are the: (1) County Commissioners; (2) County Prosecuting Attorney; (3) County Sheriff; (4) County Clerk; (5) County Assessor; (6) County Treasurer, and (7) County Coroner. Idaho Code § 31-2002 authorizes the Attorney General to investigate violations of state law by these officers *only*. It does not authorize investigations into the actions of any other public officers holding elective or non-elective office.

Violations of State Law:

Idaho Code § 31-2002 authorizes the Attorney General to investigate violations of state law by county officers holding elective office, with the exception of state laws governing open meetings. State law is made up of the statutes found in the Idaho Code. Idaho Code 31-2002 does not authorize the Attorney General to investigate the following, where a violation of state law is not involved: (1) Violations of city or county ordinances; (2) Acts with which the complaining party merely disagrees; (3) Inadequate performance of duties; (4) Policy violations; and (5) Acts performed in obedience to or permitted by a court order. Idaho Code § 31-2002(4) also specifically excludes open meetings violations from the scope of the Attorney General’s duties under this statute.

Official Capacity:

Idaho Code § 31-2002 authorizes the Attorney General to investigate violations of state law by these officers in their “official capacity” only. A county officer acts in his/her “official capacity” when the action takes place “while the officer is working or claims to be working on behalf of his employer at his workplace or elsewhere, while the officer is at his workplace whether or not he is working at the time, involves the use of public property or equipment of any kind or involves the expenditure of public funds.” Idaho Code § 31-2002(5).

Special Prosecutor:

Where a County Prosecuting Attorney has a conflict of interest, or is otherwise unable to perform the prosecutorial function, he or she may petition the court for appointment of a Special Prosecutor to act in his place. If the Attorney General makes a finding under Idaho Code § 31-2002(2)(c) that further investigation or prosecution is warranted, the County Prosecuting Attorney must seek appointment of a Special Prosecutor for that matter. If the subject of the investigation is the County Prosecuting Attorney, the Attorney General assumes the role of Special Prosecutor. Idaho Code § 31-2002(c).

Process for Reporting Violations:

Please complete the online form available on the Attorney General’s website. You are required to provide your name, address, phone number and email, since we must be able to contact you in case we need more information.

The complaint form will request the information necessary for our office to initiate an investigation. We need as much information as you can provide regarding the violation(s) that you believe have been committed, as well as the surrounding facts and circumstances.

Once a complaint is submitted, it will be assigned a tracking number and be reviewed by our staff. If we determine no further action is necessary, you will be informed as soon as possible. However, this process could take several weeks.

If we determine further action is necessary, a response may be delayed. The reason for delay is to maintain the integrity and fairness of the legal process. Our office does not comment on pending investigations, which means we will be unable to provide any information until our preliminary investigation, any further investigation and any related legal proceedings are completed. If several weeks pass without a response from our office, contact the office to inquire about the status of your complaint. Keep in mind we may be unable to provide any information or comment. We appreciate your patience in this regard.

Please remember that pursuant to Idaho Code § 31-2002, the Attorney General is authorized only to investigate allegations that a county officer who holds an elective office has violated state law while acting in his official capacity, and is not authorized to investigate violations of state open meetings laws by county officers. If you believe a violation of the law has occurred that does not fall within the scope of Idaho Code § 31-2002, you should report it to your local law enforcement authorities.

Please also bear in mind that pursuant to Idaho's public records law, any complaint form or associated documents become public records when submitted to this office. This office may be required to disclose such documents if a public request is made for them. Additionally, all documents submitted to this office become the property of the Office of the Attorney General. Original submissions will not be returned so please send only copies of documents if you desire to retain the original.