

*Let. Allen.*



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL  
BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

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Mr. Bill Wallis  
State Fire Marshal  
Department of Insurance  
700 W. State Street  
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION  
AND IS PROVIDED SOLELY TO GIVE LEGAL GUIDANCE

Dear Bill:

Issues:

Your letter asks three questions:

1. Does the state fire marshal have arrest powers in arson cases?
2. Does the state fire marshal have authority to carry weapons when dealing with arson investigations?
3. Is the office of state fire marshal recognizable as a law enforcement agency under state law?

Conclusions:

1. The state fire marshal has arrest powers in arson cases.
2. The state fire marshal has the ability to carry a concealed weapon during an arson investigation.
3. The state fire marshal is properly recognized as a law enforcement official and peace officer.

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ANALYSIS:

The first two questions raised in your letter turn on the answer to the third question, namely, whether the office of state fire marshal is recognizable as a law enforcement agency under state law. Idaho Code § 19-5101(c) provides a useful definition of "law enforcement" as "any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, rehabilitation, and juvenile delinquency." Thus, a law enforcement agency is any agency dealing with the prevention or reduction of crime and the enforcement of state laws.

The office of state fire marshal falls within this definition. Under Idaho Code § 41-254, the state fire marshal has the power and duty to "enforce the uniform fire code." Under Idaho Code § 41-255, he has the duty to "administer and enforce this act," i.e., sections 41-253 through -269 of the Code. Further, in his capacity as the state's chief arson investigation officer, the state fire marshal has broad powers in matters of "fire prevention and arson investigation." See Idaho Code § 41-257.

Even more importantly for purposes of this opinion, the position of state fire marshal should be recognized as that of a "peace officer" of the State of Idaho. Idaho Code § 41-257 gives the state fire marshal the "same responsibility and power in arson investigation as a county sheriff." He thus shares in the county sheriff's status as a peace officer under Idaho Code § 19-310. In short, the state fire marshal, when shouldering the "same responsibility and power in arson investigation as a county sheriff," must enforce the state laws. In view of the state fire marshal's responsibility to reduce or prevent arson and to exercise the powers of a sheriff in arson investigations, he comes within the definition of a "law enforcement" official and a "peace officer" whenever he is involved with an arson investigation.

Because the state fire marshal is a peace officer, he may exercise arrest powers in the course of an arson investigation. Idaho Code § 19-601 defines arrest and states that an arrest may be made by either a "peace officer or by a private person." Idaho Code § 19-603 enumerates the circumstances in which a peace officer can make an arrest, including the commission of a felony, of which arson is one.

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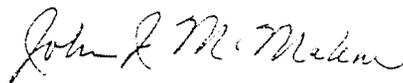
See Idaho Code §§ 18-801 through -804. Idaho Code § 41-257 circumscribes the exercise of the state fire marshal's powers as follows:

He shall not, however, interfere at any time in the operation or administration of any fire department or sheriff's office except in matters of fire prevention and arson investigation when requested by the local fire jurisdiction, sheriff's office or written and signed complaint of any person served by the local fire jurisdiction.

Thus, the fire marshal has been given the equivalent of the sheriff's power, including the power to arrest, but only with respect to fire prevention and arson investigation when requested. In the nature of things, an arson investigation would rarely present a situation justifying a warrantless arrest. Here, as elsewhere, the statute envisions close cooperation between the state fire marshal and local law enforcement officials.

The second question concerns the ability of the state fire marshal to carry weapons when dealing with arson investigations. Idaho Code § 18-3302 outlines the concealed and dangerous weapons which are illegal in Idaho and the punishments for violation of the law. It also excepts from the law possession of the specified concealed weapons by, among others, officials of the state of Idaho and peace officers. The chief arson investigation officer, appointed by the director of the department of insurance with the approval of the governor, is an official of the state of Idaho and, as set forth above, a peace officer. He is therefore allowed to carry a concealed weapon during arson investigations.

Sincerely,



JOHN J. McMAHON  
Chief Deputy

JJM/lh