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ATTORNEY GENERAL OPINION NO. 86-15

The Honorable Joe R. Williams
State Auditor
State of Idaho

STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Are elected officials of the executive branch of state government entitled to receive cash compensation for unused vacation leave upon leaving office at the end of their term?

CONCLUSION:

Elected officials of the executive branch of state government may not receive cash compensation for unused vacation leave at the end of their term of office.

ANALYSIS:

Upon separation from state service, "classified" state employees are entitled to be paid their salary for the period of their unused vacation time pursuant to Idaho Code §§ 67-5335 and 67-5337. Idaho Code § 59-1606 provides in pertinent part with respect to "nonclassified" officers and employees:

Eligible nonclassified officers and
employees in the executive department and in

the legislative department shall accrue vacation leave and take vacation leave at the same rate and under the same conditions as is provided in sections 67-5334 and 67-5335, Idaho Code, for classified officers and employees.

Thus, state employees and "eligible" state officers are entitled to be paid their salary for the period of their unused vacation leave upon leaving state employment. However, this general rule does not apply to the state's elected executive offices. Idaho Constitution, art. 4, § 19, provides in pertinent part:

The governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction shall, monthly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this constitution, is fixed as follows: Governor, three thousand Dollars (\$3,000) per annum;

....

The compensation enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

....

The legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase shall affect the salaries of the officers then in office during their term; ... (Emphasis added.)

Pursuant to Idaho Code § 59-501, the legislature has increased the per annum salary of the elected officials of the

executive branch, as permitted by Idaho Constitution, art. 4, § 19. Idaho Code § 59-501 then provides in pertinent part:

Such compensation ... shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office;...

Thus, both the constitution and statute provide that the enumerated per annum compensation of the elected officers in the executive branch shall be in full for all services rendered in any official capacity during their terms of office.

The provisions of Idaho Constitution, art. 4, § 19, were considered by the Idaho Supreme Court in State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941). Therein, the court considered a statute passed by the legislature in 1937. The statute authorized and directed the lieutenant governor and the speaker of the house of representatives to remain in Boise to complete legislative business such as preparation of journals, enrolling bills, and indexing the journals and bills. The bill appropriated additional salary for this work.

The Idaho Supreme Court held the statute to be unconstitutional. As to the lieutenant governor, it violated Idaho Constitution, art. 4, § 19. As to the speaker of the house of representatives, the bill violated Idaho Constitution, art. 3, § 23. The court held:

And as above related, art. 4, § 19, provides the lieutenant governor shall receive the same per diem as may be provided by law for the speaker- of the house of representatives "to be allowed only during the sessions of the Legislature." To make it more certain and emphatic, if such be possible, this constitutional provision further provides that "The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office." It is well settled that in construing the Constitution words are to be given their

ordinary meaning. The constitutional provisions above referred to are clear and explicit and that portion of chap. 167, 1937 Sess. Laws, relating to further compensation for the speaker of the house and president of the senate for services performed after the adjournment of the session is in direct conflict with the Constitution. (Emphasis in original)

62 Idaho at 529.

It is thus clear that the elected officials of the executive branch enumerated in Idaho Constitution, art. 4, § 19, may not be paid more for their services than their per annum salary established by Idaho Code § 59-501.

The basis for the right to compensation for elected executive officers differs fundamentally from that of other employees. Most employees are contractually entitled to compensation for services rendered. In the case of the executive officers elected for a fixed term, salary is an incident to the office. If entitled to hold the office, the right to salary follows.

The Idaho Supreme Court considered this fundamental difference in Buckalew v. City of Grangeville, 100 Idaho 460, 600 P.2d 136 (1979). That case involved a city police chief who held office for a fixed term at a fixed salary and who was improperly removed from office. The police chief sued for his salary and prevailed. The city sought to offset, from the back salary due, the amount the police chief had earned in the interim from other employment. In evaluating the salary rights of the police chief, the Idaho - Supreme Court quoted with approval from a Montana case as follows:

The city is not entitled to have credited upon plaintiff's claim for salary the amount he earned in other employment during the time he was wrongfully excluded from his office. His claim does not rest upon contract. He was not an employee, but an officer. The salary is an incident to the office, and, if entitled to the office, his

right to the salary follows. (Emphasis added.)

100 Idaho at 462.

The court went on to quote with approval from 150 ALR, 100, 103, in pertinent part as follows:

The reason advanced for excepting public officers from the application of the general rule as to mitigation of damages is that, according to the general conception of office, no contract, in the usual sense of the word, exists between a public officer and the government, the compensation for the office being a mere incident thereof and belonging to the officer by virtue of his right to the office and not by reason of a contractual relationship. (Emphasis added.)

100 Idaho at 462

The foregoing statements are equally applicable to elected officials of the executive branch of state government. Like the police chief, they receive a fixed salary for a fixed term of office. Moreover, as noted previously, Idaho Constitution, art. 4, § 19, is quite specific in providing that the officers shall receive "during their continuance in office" the enumerated compensation, and no "diminution or increase shall affect the salaries of officers then in office during their term."

In other words, state elected officials of the executive branch receive fixed compensation so long as they hold their office. Their right to compensation is not affected by sickness or vacation. It is strictly a right incident to their holding office. By the same token, they can receive no more than the compensation fixed by Idaho Constitution, art. 4, § 19, and Idaho Code § 59-501. At the end of their term, they are not entitled to be paid their salary for the period of their unused vacation time.

AUTHORITIES CONSIDERED:

Idaho Const., art. 4, § 19

Idaho Const., art. 3, § 23

Idaho Code § 59-501

Idaho Code § 59-1606

Idaho Code § 67-5334

Idaho Code § 67-5335

Idaho Code § 67-5337

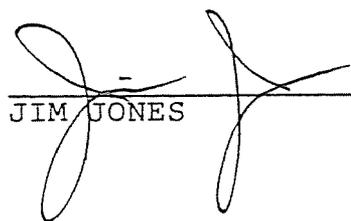
State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415
(1941)

Buckalew v. City of Grangeville, 100 Idaho 460, 600 P.2d 136
(1979)

150 ALR, 100, 103

DATED this 17th day of December, 1986.

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cc: Idaho Supreme Court
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