



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

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Mr. Tom Moss
Prosecuting Attorney for
Bingham County
75 East Judicial
Blackfoot, ID 83221

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Legality of Individual Appearing on Ballot as
Candidate for District and Magistrate Judge

Dear Mr. Moss:

You have requested our advice regarding the legality of an individual appearing on the ballot as a candidate for both district and magistrate judge. For the reasons set forth below, it is our conclusion that Idaho law does not forbid an individual from seeking both offices.

We begin our analysis by noting that where no statutory prohibition exists, there are two clear lines of authority directly opposed to each other in this area. Under the "New York" cases and their progeny, the courts have held that a candidate cannot appear on the same ballot twice:

Prohibition of a dual nomination is not a denial of the right of the electors to nominate persons of their own selection nor does it constitute interference with the functioning of the Election Law respecting nominations. Such a ruling is not disfranchisement yet that is exactly what would happen whenever electors vote for a candidate who may not legally qualify, if elected, to take and hold both offices to

which he had been nominated. County Law, § 411. An election under such circumstances would be illusory and sham if not an actual fraud upon the electorate and should not be permitted.

Burns v. Wiltse, 303 N.Y. 319, 102 N.E.2d 569 at 572 (Ct. App. N.Y., 1951).

The opposing line of authority, exemplified by the "Illinois" line of cases, holds that:

We know of no rule of law which prohibits a man's becoming a candidate or being voted for at the same election for two incompatible offices, but undoubtedly, if he should be elected to both, he would be incapable of discharging the duties of both offices and would be compelled to elect which to accept.

Velazquez v. Soliz, 141 Ill. App. 3d 1024, 490 N.E.2d 1346 (1986). Our research indicated that of the courts reviewing this issue, the states are evenly divided as to which line of authority they follow. Further, no Idaho decision on point exists. Our conclusion, therefore, is but our best guess of what an Idaho court would do when confronted with this issue.

Under prior Idaho law, a direct prohibition existed in Idaho Code § 39-904 preventing a candidate's name from appearing on the ballot more than once. The prohibition was repealed in 1970 as part of the rewrite of the entire election law. Generally, legislative history in Idaho is poor. In this case, however, a detailed committee report was prepared. See, Idaho Legislative Council Research Publication No. 11, November 1968. While not directly explaining why the prohibition was removed, the report indicates that title 9 of chapter 34 was modeled after Nevada law. In checking with the Nevada Secretary of State, they indicated that their corresponding statute has been interpreted to permit a candidate to run for more than one office. Further, the Idaho Secretary of State's office has interpreted our statute consistent with Nevada's. It is well settled that the interpretation of a law by the agency charged with its administration is an important construction aid in identifying legislative intent. State v. Kleppe, 417 F.Supp. 873 (D.C. Idaho 1973).

Historically it is important to note in at least three recent elections, candidates for district and magistrate judgeships have appeared on the same ballot. Our research also shows that no policies or guidelines of the Administrative Office of the Idaho Courts nor the Canons of Judicial Ethics adopted by the Idaho Supreme Court prohibit the practice. Finally, it is important to note that the perceived evil justifying the "New York" rule, that of a popular candidate securing two offices and then permitting another individual to be appointed through a partisan process to one of the positions, does not exist here. The appointive process is, by statute, non-partisan upon a vacancy occurring in either office.

I hope this information is helpful. Please advise if we can be of further assistance.

Very truly yours,



PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK/tg