



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

September 22, 1986

Thomas Katsilometes
Bannock County Commissioner
Bannock County Courthouse
Pocatello, ID 83201

RE: SIXTH JUDICIAL DISTRICT PUBLIC DEFENDER

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

Dear Commissioner Katsilometes:

On Friday, September 19, 1986, I received a phone call in our office from the Bannock County Commissioners concerning the appointment of a Sixth Judicial District public defender. It was related to me that a meeting is to be held on Friday, September 26, 1986, at which time the eighteen county commissioners who comprise the commissioners for the Sixth Judicial District will meet to consider the appointment of a public defender for the entire district.

Specifically, it was requested that a representative from our office attend the meeting on Friday to guide the commissioners in the review process of applicants in order to meet the legal requirements for such an appointment. Unfortunately, this office will not be able to attend that meeting due to the circumstances which have been brought to our attention.

From the information our office has received, it appears that there are potentially serious legal defects in the process that has been used in seeking the appointment of a district-wide public defender. I will outline these problems briefly and advise that you contact your local county prosecuting attorney for advice concerning the implementation of the process.

Thomas Katsilometes
Bannock County Commissioner
September 22, 1986
Page 2

1. JOINT POWERS AGREEMENT--From the information given to our office, it appears that there is no joint powers agreement in effect to implement the district-wide public defender system. Although counties may establish a joint office of public defender to defend indigent persons from more than one county, Idaho Code § 19-859(3)(b), in order to effectuate the system, it is necessary for those counties participating to follow the mandate of Idaho Code § 67-2328, which provides for a joint powers agreement. Before counties can pursue a district wide public defender system, it is necessary to have the contractual agreement adopted and in place by resolution of each Board of County Commissioners prior to the appointment of a public defender. From the information that this office has received, it appears that has yet to be accomplished and thus, any agreement to hire a public defender for the judicial district would not be effective. Before pursuing this matter any further, it is our strong recommendation that the counties meet this requirement before attempting to select a public defender.

2. SIX-COUNTY PARTICIPATION--There is no indication that the budgetary process has been met with respect to the appointment of a public defender for the Sixth Judicial District. This would require the adoption of a budget by each county based upon the joint powers agreement, to support the public defender and staff and provide for the compensation required by law. If this process has not been met, then any contractual agreement under the joint powers act would be ineffective. Furthermore, from press accounts, it appears that two and possibly three counties already have appointed the firm of Zollinger and McDermott, of Pocatello, as their public defender. It is not clear to us whether these counties continue to show any interest in the district-wide public defender system

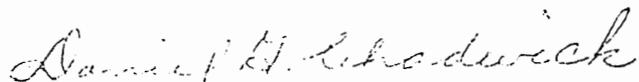
Thomas Katsilometes
Bannock County Commissioner
September 22, 1986
Page 3

or whether they are going to pursue the public defender on a county-by-county basis. We believe this matter must be resolved at the same time that the joint powers agreement is resolved.

3. OPEN MEETING LAW--Finally, it appears there may not have been compliance with the Idaho Open Meeting Law found at Idaho Code §§ 67-2340 to 67-2347. This law affects the creation of the joint powers agreement as well as the budgeting and selection process for the public defender. Until the requirements of this law are met, the actions of the commissioners in creating the district-wide public defender remain suspect and are subject to possible judicial invalidation.

This is, by no means, an exhaustive list of potential problems with the process. Obviously, the entire process should be reviewed by the prosecuting attorneys of each of the counties, with advice rendered to the Boards accordingly. It should be noted that our office has received a substantial number of complaints concerning the process used in the Sixth Judicial District. As soon as there is compliance with the statutes involving the joint powers agreement, the open meeting law and the other questions raised, this office will be able to assist you.

Sincerely,



DANIEL G. CHADWICK
Deputy Attorney General
Intergovernmental Affairs

DGC/mkf

cc: The Honorable Peter McDermott
George Shiozawa, Bannock County Commissioner
Carolyn Meline, Bannock County Commissioner
George M. Hulme, Bear Lake County Commissioner
LeGrand Rigby, Bear Lake County Commissioner
Floyd H. Bird, Bear Lake County Commissioner

Thomas Katsilometes
Bannock County Commissioner
September 22, 1986
Page 4

Lafe Holbrook, Caribou County Commissioner
Ariel Larson, Caribou County Commissioner
Glenn V. Turner, Caribou County Commissioner
Robert M. Hull, Franklin County Commissioner
Wendell H. Smith, Franklin County Commissioner
Jack H. Moser, Franklin County Commissioner
Con Alder, Oneida County Commissioner
Gene Edwards, Oneida County Commissioner
George G. Neal, Oneida County Commissioner
Ralph Wheeler, Power County Commissioner
Lois S. Bauer, Power County Commissioner
Seth Neibaur, Power County Commissioner
Larry Echohawk, Bannock County Prosecuting Attorney
Lynn Brower, Bear Lake County Prosecuting Attorney
Clyde Nelson, Caribou County Prosecuting Attorney
Jay McKenzie, Franklin County Prosecuting Attorney
David L. Evans, Oneida County Prosecuting Attorney
Ben Cavaness, Power County Prosecuting Attorney