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December 31, 1987

Jerry M. Conley, Director
Idaho Fish and Game
600 South Walnut, Box 25
Statehouse Mail

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Fish and Game Violations - Citizens Against Poaching

Dear Mr. Conley:

QUESTION PRESENTED:

For several years the Idaho Department of Fish and Game has worked with Citizens Against Poaching (CAP). CAP is a private group that provides rewards to citizens who furnish information on fish and game violations. This program has been a tremendous success but is in jeopardy due to lack of funds. The department requests a legal guideline as to whether any of the following would be in violation of Idaho Constitution art. 3, § 19 (prohibiting local and special laws), art. 8, § 2 (prohibiting loan of state's credit) or art. 4, § 20 (providing for specific departments in executive branch of government).

1. Whether the department could provide a grant to CAP to be used solely for the payment of rewards?
2. Whether the department could enter into a professional services contract with CAP to pay the rewards?
3. Whether legislation could be enacted that would allow CAP to receive the proportion of civil penalties resulting from convictions generated by information provided through CAP?

4. Whether legislation could provide that \$.50 to \$1.00 be added to the cost of a hunting or fishing license, said monies designated to go to the CAP program?

CONCLUSION:

Idaho Constitution art. 3, § 19, and art. 8, § 2, would not be violated by legislation establishing a program to be administered by CAP. However, it would violate art. 4, § 20, to delegate to CAP the administration of a state program. CAP is not an executive department entitled to exercise functions, powers and duties of the executive branch. Thus, if legislation is enacted creating a reward program, it must be administered by an executive department such as the Department of Fish and Game. Appropriations for the program should also be made directly to the department. However, the department could enter into agreements with private entities such as CAP to provide services to the department in the administration of a state reward program.

ANALYSIS:

The Idaho Constitution defines the general structure of state government and the structure of the executive branch of government. Idaho Constitution art. 2, § 1, provides in pertinent part:

The powers of government of this state are divided into three distinct departments, the legislative, executive and judicial; . . .

The executive department of government is defined in art. 4, Idaho Constitution. Idaho Constitution art. 4, § 20, provides:

All executive and administrative officers, agencies, and instrumentalities of the executive department of the state and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than January 1, 1975. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections or units in such a manner as will tend to provide an orderly arrangement in the administrative organization of state government.

Temporary agencies may be established by law and need not be allocated within a department; however, such temporary agencies may not exist for longer than two (2) years. [Emphasis added.]

Idaho Constitution art. 4, § 20, has not yet been construed by the Idaho Supreme Court. However, it specifically provides that all executive and administrative officers, agencies and instrumentalities of the executive branch of state government and their respective functions, powers, and duties must be allocated only among the state elected officials and no more than twenty designated departments. Idaho Code § 67-2402 enumerates the departments to which the executive power has been allocated. The language of the institutional and statutory provisions does not permit the legislature to allocate functions, powers and duties of the executive branch to non-governmental entities such as CAP.

Therefore, if the Department of Fish and Game desires to establish a state-funded program to provide rewards for reporting fish and game violations, we would recommend the department seek legislation empowering it to administer such a program. The department would also need an appropriation to administer the program.

Once the reward program is established, the department would determine the best means to implement it. If outside groups, such as CAP, can provide services more effectively than the department can directly, the department may want to contract with such third parties to assist in carrying out the program.

With the foregoing analysis in mind, we can address the specific questions you have asked.

1. Whether the department could provide a grant to CAP to be used solely for the payment of rewards?

As discussed above, following legislative establishment of a reward program, the department could contract with third parties such as CAP to assist in the conduct of the program. The contractor could receive compensation for its services and could receive payment or reimbursement for rewards paid.

We would recommend the use of contracts rather than grants to clearly reflect that the program is a state program rather than a private program. We understand there may be a need to keep confidential the identity of some informants. Therefore, in developing legislation the department may wish to provide for

non-disclosure of state financial records that would identify an informant.

2. Whether the department could enter into a professional services contract with CAP to pay the rewards?

As discussed in response to question 1 above, contracts with third parties to assist the department in implementing a program would be permissible.

3. Whether legislation could be enacted that would allow CAP to receive the proportion of civil penalties resulting from convictions generated by information provided through CAP?

It would not be permissible for CAP to be designated in legislation as the recipient of a portion of civil penalties. However, it would be permissible to provide that any person providing information leading to the imposition of a civil penalty would be entitled to a reward for providing such information. The resources of the state cannot be used in support of any particular private party. In Village of Moyie Springs, Idaho v. Aurora Manufacturing Co., 82 Idaho 337, 353 P.2d 767 (1960), the court quoted with approval from the Supreme Court of Florida as follows:

Our organic law prohibits the expenditure of public money for a private purpose. It does not matter whether the money is derived by ad valorem taxes, by gift, or otherwise. It is public money and under our organic law public money cannot be appropriated for a private purpose or used for the purpose of acquiring property for the benefit of a private concern. It does not matter that such undertakings may be called or how worthwhile they may appear to be at the passing moment. The financing of private enterprises by means of public funds is entirely foreign to a proper concept of our constitutional system. 82 Idaho at 347.

Thus, while the state may establish a reward program for persons supplying information regarding fish and game violations it may not appropriate money to any particular private organization.

4. Whether legislation could provide that \$.50 to \$1.00 be added to the cost of a hunting or

fishing license, said monies designated to go to the CAP program?

The legislature could provide for an increase in hunting and fishing license fees to fund a state reward program. However, as discussed in response to question 3, it would not be permissible to appropriate funds for the benefit of a private organization such as CAP.

We have also considered whether legislation establishing a program to be administered by CAP would be unconstitutional on other grounds. Art. 3, § 19, Idaho Constitution, prohibits the legislature from passing local or special laws in certain cases. As noted in the early case of Butter v. Lewiston, 11 Idaho 393, 83 P. 234 (1905), this section prohibits enactment of special laws only on subjects enumerated therein; it leaves the legislature the master of its own discretion in passing special laws on subjects not prohibited by the constitution. Idaho Constitution art. 3, § 19, does not apply in this case.

Art. 8, § 2, Idaho Constitution, prohibits loaning the credit of the state. However, "credit" was construed in Nelson v. Marshall, 94 Idaho 726, 497 P.2d 47 (1972), to mean some new financial liability upon the state which results in the creation of state debt. The case also pointed out that a loan of state funds is not a loan of state credit. Since a proposed program to appropriate funds to CAP would not create state debt, it would not violate Idaho Constitution art. 8, § 2.

SUMMARY:

In summary, art. 3, § 19 (prohibiting local and special laws), and art. 8, § 2 (prohibiting loan of state's credit), would not be violated by a legislative program to be administered by CAP. However, art. 4, § 20, would preclude legislation delegating to CAP the administration of a state program because CAP is not an executive department entitled to exercise functions, powers and duties of the executive branch. If legislation is enacted creating a reward program, it must be administered by an executive department such as the Department of Fish and Game. Appropriations for the program should be made to the department. The department could enter into agreements with private entities such as CAP to assist in administration of the state reward program.

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Sincerely,



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Chief, Business Regulation
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Analysis by:
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Public Employee Retirement System

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