



STATE OF IDAHO

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August 23, 1988

Major General Darrell V. Manning
Adjutant General
Idaho National Guard
P.O. Box 45
Boise, Idaho 83707

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

Re: Tort Liability Coverage for MWR Employees and Voluntary
Service Persons

Dear General Manning:

I have been requested to respond to your August 1, 1988, letter in which you request a review of the question whether certain personnel and volunteers employed by the Idaho National Guard in morale, welfare and recreation (MWR) activities would be considered to be state "employees" as provided by Idaho Code § 6-902(4).

As stated in your letter these employees and uncompensated volunteers while working for MWR activities having a federal instrumentality status are considered federal employees for work related injuries and tort claims only. (5 U.S.C. 2105(c), 10 U.S.C. 9779(b) and 10 U.S.C. 1588.) The question of whether the Idaho Tort Claims Act would provide coverage for these employees and volunteers arises when such personnel are not under federal instrumentality status.

This question and situation is analogous to the one raised in 1975 regarding whether state employees and citizen volunteers for 4-H projects would come under the Idaho State Comprehensive Liability Policy. The conclusion in Attorney General Opinion 57-75 was that such volunteers would be covered under the state's then insurance policy. The same analysis utilized in

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the 1975 opinion would apply today. The key for a finding of coverage is whether the activities performed by the volunteers are a public service for the state. The attorney general found that the 4-H clubs and farm bureaus, which were established under federal legislation (Smith Lever Act), served a public purpose.

It is clear that the volunteers under the supervision of the military division perform their services on behalf of the State of Idaho. They serve a public purpose to enhance the morale of those in service to the state and country. As employees and volunteers of the military division they would be within the protected classification and the definition contained in Idaho Code § 6-902(4), which states:

An employee means an officer, employee, . . . and . . . persons acting on behalf of the governmental entity in any official capacity, temporarily or permanently in the service of the governmental entity, whether with or without compensation, . . .

I am of the opinion that employees and volunteers of the military division, when acting under the direct supervision of the military personnel, would come within the protections provided by the Idaho Tort Claims Act.

Additionally, it appears that the state insurance fund will provide workers compensation insurance coverage for authorized volunteers in public employment. The manager of the state insurance fund announced on August 15, 1988, that the fund would cover certain volunteers if the department head or public employer provided substitute payroll information.

Very truly yours,

Michael R. Jones
Deputy Attorney General