



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

ATTORNEY GENERAL OPINION NO. 89-9

TO: Darrell Waller, Coordinator
Bureau of Disaster Services
Len B. Jordan Building
Statehouse Mail

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED:

1. What are the authorities and responsibilities of the county commissioners to the citizens of an incorporated municipality in times of a disaster emergency?

2. How are these authorities and responsibilities affected by those of the mayor and/or city council?

3. Does the supervisory aspect of the county commissioners over the sheriff, under Idaho Code § 31-802, and, in turn, the sheriff's authorities and responsibilities within the municipality, provide a means for the commissioners to act within the municipality through the sheriff?

4. Is the implication of an emergency disaster planning requirement on mayors as contained in Idaho Code § 46-1009 strong enough to make such planning a legal duty?

5. If the county commissioners have no authority or responsibility for the citizens of the cities, what is the status of the county plans as currently promulgated in regard to these citizens? Does the fact that, in many cases, portions of these plans were produced with assistance from city fire, police and other city officials and which address locations within the city, alter the situation?

6. If the county commissioners have no authority in the municipality and the city leadership has no stated disaster emergency planning and response responsibilities, does the responsibility devolve upon any other agency?

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CONCLUSIONS:

1. The responsibilities and authorities of the county commissioners to the citizens of an incorporated municipality in times of a disaster emergency are defined in the intergovernmental disaster emergency plan, if any, agreed to by the city. Idaho Const. art. 12, § 2, prohibits the county from unilaterally imposing its plan on an incorporated city.

2. Unlike counties, cities are not required to plan for disaster emergencies. Once a disaster emergency occurs within the city's limits, however, the city government has the responsibility to handle the situation.

3. Article 12, § 2, prohibits the sheriff or any other county official from interfering with a municipality.

4. The Idaho Disaster Preparedness Act of 1975 only "encourages" the cities to plan for disaster emergencies; the legislature does not require the cities to plan.

5. Plans voluntarily entered into among the various political subdivisions are valid under the Idaho Disaster Preparedness Act of 1975.

6. The cities have the ultimate authority to plan for disaster emergencies. Although not statutorily required to plan for disaster emergencies, cities are strongly urged to do so in order to minimize the risk of injury to their citizens.

ANALYSIS:

1. County's Responsibility to Municipality in Times of Emergency.

Under the Idaho Disaster Preparedness Act of 1975, all counties are required to participate in the preparation of a disaster emergency plan. Idaho Code § 46-1009(1) through (5) states:

- (1) Each county within this state shall be within the jurisdiction of and served by the bureau and by a county or intergovernmental agency responsible for disaster preparedness and coordination of response.

- (2) Each county shall maintain a disaster agency or participate in an intergovernmental disaster agency which, except as otherwise provided under this act, has jurisdiction over and serves the entire county, or shall have a liaison officer appointed by the county commissioners designated to facilitate the cooperation and protection of that subdivision in the work of disaster prevention, preparedness, response and recovery.
- (3) The chairman of the board of county commissioners of each county in the state shall notify the bureau of the manner in which the county is providing or securing disaster planning and emergency services. The chairman shall identify the person who heads the agency or acts in the capacity of liaison from which the service is obtained, and furnish additional information relating thereto as the bureau requires.
- (4) Each county and/or intergovernmental agency shall prepare and keep current a local or intergovernmental disaster emergency plan for its use.
- (5) The county or intergovernmental disaster agency, as the case may be, shall prepare and distribute to all appropriate officials in written form a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster chain of command.

The promulgation of a disaster emergency plan is part of the county's police power. See AGO 76-25, at p.110 (disaster preparedness plans are within the scope of police power jurisdiction). Nonetheless, article 12, § 2, of the Idaho Constitution prohibits a county from enforcing its police regulations within an incorporated municipality. Hobbs v. Abrams, 104 Idaho 205, 207, 657 P.2d 1073 (1983) ("This Court has previously held that following Article 12, § 2 of the Idaho State Constitution, a county cannot make police regulations effective within a municipality"); Boise City v. Blaser, 98 Idaho 789, 791, 572 P.2d 892 (1977) ("to give effect to a county permit within city limits would be to violate the separate sovereignty provisions of Idaho Const., art. 12, § 2, and the careful avoidance of any county/city jurisdictional conflict or overlap which is safeguarded therein"); Clyde Hess Distributing

Co. v. Bonneville County, 69 Idaho 505, 511, 210 P.2d 798 (1949) (whether the county regulation conflicts with any existing municipal ordinance is irrelevant, "[t]he question is one of power and not one of conflict"). Therefore, a county may not unilaterally impose its emergency disaster plan on a municipality.

The language of Idaho Code § 46-1009(2), "Each county shall maintain a disaster agency or participate in an intergovernmental disaster agency which, except as otherwise provided under this act, has jurisdiction over and serves the entire county," does not give the county's disaster agency jurisdiction over the incorporated municipalities within the county limits. It would be a violation of art. 12, § 2, to interpret that clause as granting such authority. The subordinate clause, "which . . . has jurisdiction over and serves the entire county," should be construed as referring to the intergovernmental disaster agency, not the county agency. "Where two constructions of a statute are possible, one resulting in the statute being constitutional and the second rendering the statute unconstitutional, [the Idaho Supreme Court] will construe the statute . . . so as to avoid conflict with the constitution." Idaho State AFL-CIO v. LeRoy, 110 Idaho 691, 698, 718 P.2d 1129 (1986).

That the county has no police power authority over an incorporated city does not necessarily mean the county has no responsibility during a disaster emergency. The State Disaster Preparedness Act of 1975 clearly contemplates the various political subdivisions will cooperate and help each other during an emergency. In promulgating the Act, the legislature found it necessary "to authorize the state and political subdivisions to execute agreements and . . . [t]o authorize and encourage cooperation in disaster prevention, preparedness, response and recovery." Idaho Code § 46-1003(1), (6). Idaho Code § 46-1009 allows the counties to participate in an intergovernmental disaster emergency plan instead of one limited to the county. Once the county enters into an intergovernmental agreement, however, then the declaration of a local disaster emergency authorizes "the furnishing of aid and assistance thereunder." Idaho Code § 46-1011(2). Therefore, the county's responsibility to municipal citizens during a disaster emergency is determined by the intergovernmental disaster emergency plan.

2. Authorities and Responsibilities of the Mayor and City Council to Their Citizens During a Disaster Emergency.

The Idaho Disaster Preparedness Act of 1975 does not require cities to participate in an intergovernmental disaster emergency

plan. Idaho Code § 46-1003 grants the cities the authority to participate in such a plan; Idaho Code § 46-1011 encourages the cities "to conclude suitable arrangement for furnishing mutual aid in coping with disasters." Idaho Code § 46-1014 assumes that participation in intergovernmental planning is optional with the political subdivision:

Political subdivisions not participating in the intergovernmental arrangements pursuant to this act nevertheless shall be encouraged and assisted by the bureau to conclude suitable arrangement for furnishing mutual aid in coping with disasters. (Emphasis added.)

The Act defines "political subdivisions" as "any county, city, or other unit of local government." Idaho Code § 46-1002. Although Idaho Code § 49-1009 requires the counties to prepare a disaster emergency plan, there is no comparable statute explicitly requiring the cities to participate. Indeed, in passing the Idaho Disaster Preparedness Act of 1975, the legislature repealed the previous law that explicitly authorized cities to prepare local plans to be submitted to the state bureau chief for his approval.

While not directed at disaster emergencies, Idaho Code § 50-302 does mandate that cities pass ordinances for the health, welfare and safety of the citizens:

Cities shall make all such ordinances, by-laws, rules, regulation [regulations] and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry.

The mandate to pass ordinances "as may be expedient," however, does not require a city to pass a particular ordinance. The city has the discretion to enact the disaster emergency ordinances, if any, it believes best promote the welfare of the city.

In the event of a local catastrophe, the mayor has the responsibility for declaring a disaster emergency under Idaho Code § 46-1011. Such a declaration triggers "any and all" emergency plans. The municipal government would ultimately be responsible for the handling of any municipal disaster emergency, regardless of the prior planning.

3. Sheriff's Authorities and Responsibilities Within the Municipality and the Commissioners' Supervisory Powers.

Idaho Code § 46-1009(6) states:

The sheriff of each county shall:

- (a) be the official responsible for coordination of all search and rescue operations within his jurisdiction;
- (b) prepare and keep current a plan to make use of the search and rescue capability and resources available within the county.

The board of county commissioners has the duty "[t]o supervise the official conduct of all county officers" under Idaho Code § 31-802. That responsibility, however, is circumscribed by Idaho Code § 31-801, which states:

The boards of county commissioners in their respective counties shall have jurisdiction and power, under such limitations and restrictions as are prescribed by law, as provided in the following sections, numbered 31-802 to 31-836, inclusive. (Emphasis added.)

Article 12, § 2, of the Idaho Constitution prohibits the county from interfering with the affairs of an incorporated municipality. Therefore, the county commissioners and sheriff may not constitutionally take over the duties of the municipality.

4. Whether Idaho Code § 46-1009 Implies a Legal Duty on the Cities to Plan for Disaster Emergencies.

Idaho Code § 46-1009, dealing with disaster agencies and services, pertains only to counties and intergovernmental disaster agencies and services; it does not mention cities. Idaho Code § 46-1011, dealing with local disaster emergencies, refers to cities, but does not require the cities to plan for a disaster emergency. Under Idaho Code § 46-1011, it is true, only the mayor of the city may declare a disaster emergency within the city: "A local disaster emergency may be declared only by a mayor or chairman of the county commissioners within their respective political subdivisions." However, as mentioned earlier, Idaho Code § 46-1014 clearly indicates that city planning for disasters is discretionary. The legislature has not specifically required

cities to plan for disaster emergencies, and the requirement cannot be implied from the statutory language.

5. Status of Current Plans Entered Into by City and County Government.

The disaster emergency plans developed by county and city officials working together are valid. The Idaho Disaster Preparedness Act of 1975 authorizes the political subdivisions to enter into such agreements. Idaho Code § 46-1003(2). Because the cities voluntarily ratify the disaster emergency plans, art. 12, § 2, of the Idaho Constitution is not violated.

6. Responsibility of Other Agencies to the Municipal Citizens.

The bureau of disaster services "shall prepare, maintain, and update a state disaster plan based on the principle of self-help at each level of government." Idaho Code § 46-1006(2). Furthermore, it "shall participate in the development and revision of local and intergovernmental disaster plans." Idaho Code § 46-1006(3). The bureau's legislative mandate, therefore, is to oversee and coordinate, not to impose its plans on a city. The responsibility for planning for disaster emergencies within the municipal boundaries lies with the city.

Even though the Idaho legislature only "encourages" cities "to conclude suitable arrangement for furnishing mutual aid in coping with disasters," Idaho Code § 46-1010, the cities would be wise to develop comprehensive plans for disaster emergencies. The cities have the ultimate responsibility "to maintain the peace, good government and welfare of the [municipal] corporation." Idaho Code § 50-302. A city which has not adopted procedures and trained employees in emergency response is likely to approach a disaster with an ill-conceived approach and untrained officers and employees. In view of the strong legislative encouragement of city disaster planning, the bureau of disaster services should do what it can to urge cities to participate in development of intergovernmental disaster plans.

SUMMARY:

The Idaho Disaster Preparedness Act of 1975 requires the counties, but only "encourages" the cities, to enter into their own or an intergovernmental disaster emergency plan. Because responsibility for the health, welfare and safety of the municipal citizens rests with the city government, the county may not unilaterally impose its plan on the city. In the event of a

disaster emergency within the municipal boundaries, the city is responsible for handling the crisis. Even though the city is not statutorily required to participate in a disaster emergency plan, the Office of the Attorney General strongly urges the cities to so participate in order to minimize potential injury resulting from future disasters.

AUTHORITIES CONSIDERED:

Constitutions:

Idaho Constitution art. 12, § 2.

Cases:

Boise City v. Blaser, 98 Idaho 789, 791, 572 P.2d 892 (1977).

Clyde Hess Distributing Co. v. Bonneville County, 69 Idaho 505, 511, 210 P.2d 798 (1949).

Hobbs v. Abrams, 104 Idaho 205, 207, 657 P.2d 1073 (1983).

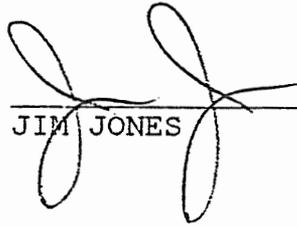
Idaho State AFL-CIO v. LeRoy, 110 Idaho 691, 698, 718 P.2d 1129 (1986).

Statutes:

Idaho Code § 31-801.
Idaho Code § 31-802.
Idaho Code § 46-1002.
Idaho Code § 46-1003.
Idaho Code § 46-1006.
Idaho Code § 46-1009.
Idaho Code § 46-1010.
Idaho Code § 46-1011.
Idaho Code § 46-1014.
Idaho Code § 50-302.

DATED this 3rd day of October, 1989.

JIM JONES
Attorney General
State of Idaho



JIM JONES

Analysis by:

Priscilla Hayes Nielson
Deputy Attorney General

cc: Idaho Supreme Court
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