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ATTORNEY GENERAL OPINION NO. 89-10

TO: Martin L. Peterson  
Centennial Commission  
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Is the Idaho Centennial Commission liable for contract or tort claims resulting from local centennial committee activities and are volunteers working on local centennial activities personally liable for negligence claims arising out of centennial events?

CONCLUSION:

Questions of liability necessarily depend upon particular facts and circumstances. However, under normal circumstances, the Idaho Centennial Commission will not be liable for contract or tort claims arising from local centennial events. Under normal circumstances, volunteers at centennial events will be protected from personal liability to the same extent as regular employees of political subdivisions.

ANALYSIS:

A. Background.

The Idaho Centennial Commission was initially established in 1984 by Executive Order 84-13 and continued in 1986 by Executive Order 86-18. In 1988 the Idaho legislature adopted Senate Bill 1264 which established in the Office of the Governor the Idaho Centennial Commission. The Idaho Centennial Commission's charge is "to plan and coordinate activities relating to the celebration of this centennial of Idaho's statehood." Idaho Code § 67-1990.

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The Idaho Centennial Commission in furtherance of its purpose contacted the county commissioners in all 44 Idaho counties urging them to establish "local centennial committees." Each county adopted a resolution designating an official centennial committee. In certain instances the county named city-sponsored centennial committees or non-profit organizations or other private associations.

It is our understanding the Idaho State Centennial Commission does not exercise any supervision or control over the local committees' activities. However, the commission does provide upon request technical assistance to local committees. The principal function of the Idaho Centennial Commission with respect to local committees has been the sharing of revenues received from the sale of Idaho centennial license plates. This revenue sharing has taken two forms. First, each local committee designated by the county receives a share of revenue based upon centennial license plate sales within the county. There are no strings attached to these distributions. Second, the commission makes grants to certain sponsors of centennial events who apply for funding for specific projects. If approved, the project sponsor must make financial reports of expenditures to assure that expenditures are made for the projects funded. However, the commission does not pre-approve expenditures or otherwise oversee implementation of the projects.

B. Liability for Contracts.

The first part of your inquiry concerns contractual liability of the commission for contracts made by local committees. Three basic types of contractual arrangements are recognized by the courts. They are: (1) the express contract, wherein the parties expressly agree regarding a transaction; (2) the implied in fact contract, wherein there is no express agreement, but the conduct of the parties implies an agreement from which an obligation in contract arises; and (3) the implied in law contract or quasi contract. Continental Forest Products, Inc. v. Chandler Supply Company, 95 Idaho 739, 518 P.2d 1201 (1974).

An express contract is the easiest contract to identify because the parties manifest their agreement by words. An example of an express contract would be a written agreement by a local committee to lease a photocopy machine.

An implied contract is somewhat more difficult to identify because the parties' agreement is manifested by conduct. The contract could be partly express and partly implied in fact. For example, if a local committee needed an office painted and it

telephoned a painting contractor to come to the office to paint, it may be inferred that the local committee has agreed to pay the painter a reasonable fee for his services, although nothing is said of this.

It is our understanding that local committees are not authorized to and in fact do not make contracts for the commission. Consequently, the commission will not be liable on the basis of express or implied contract theory.

A contract implied in law, or quasi contract, is not a contract at all but an obligation imposed by law to do justice even though it is clear that no promise was ever made or intended. Thus, a quasi contract is the most difficult contract to identify. It is a non-contractual obligation which is treated procedurally by the courts as a contract. The function of the quasi contract is to prevent the unjust enrichment of a party.

It is possible an unassumed risk may arise under a quasi contractual theory for which the Idaho Centennial Commission may become responsible. For example, the Idaho Centennial Commission may know that a local centennial organization is holding an event to benefit the Idaho Centennial Commission. If, under the facts, it appears inequitable to allow the commission to receive the benefits of the event without paying for it, a court could apply equitable principles and find the Idaho Centennial Commission responsible to make restitution for costs of the event to the extent the commission benefitted from it. For example, if a local fund raising activity were undertaken to raise funds for the centennial commission, it would be inequitable to allow the commission to receive revenues from the event unless those contracting with the local committee were paid first. Given our understanding of the nature of the centennial commission's normal relationship to local committees (i.e., a funding source for them), it seems unlikely the commission would be viewed as a party unjustly enriched by the local committees' activities.

C. Liability for Torts.

The second part of your question deals with the commission's potential tort liability for torts committed in conducting local events. A tort is the wrongful invasion and harm of an interest protected by law. Just's, Inc. v. Arrington Construction Company, 99 Idaho 462, 583, P.2d 997 (1978). For example, if someone is injured as a result of negligence in conducting an activity, the injured person may sue for damages caused by the negligence.

The Idaho Tort Claims Act defines the liability of governmental entities such as the Idaho Centennial Commission for torts committed by governmental entities and their employees. As defined in the act, a "governmental entity" includes a state commission and a political subdivision such as a county, city or municipal corporation. Idaho Code §§ 6-902(1), 6-902(2), 6-902(3).

The Idaho Tort Claims Act defines an employee at Idaho Code § 6-902 as follows:

4. "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, 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, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

Pursuant to the tort claims act, the centennial commission would be liable for torts of a local centennial committee only if the local committee was an "employee" of the centennial commission as defined in the act. Pursuant to the definition of "employee," a local committee would not be an "employee" of the commission unless it was acting on behalf of the commission in any official capacity and was not acting as an independent contractor.

Based upon our understanding of the normal relationship between the commission and local committees, it appears unlikely a local committee would be considered to be an employee of the commission. Since the official status of local committees is granted by county resolution, it is probable local committees would be viewed as acting in an official capacity on behalf of the county, rather than on behalf of the commission.

In cases in which local committees applied for and received grants to conduct specific projects, they might be viewed as conducting activities on behalf of the commission. However, in such cases they would probably be viewed as acting as independent contractors rather than as employees.

The courts have stated in reviewing whether an individual is an employee or independent contractor that the determination must be made on a case by case basis. Sines v. Sines, 110 Idaho 776, 718 P.2d 1214 (1986). The integral test for determining whether a

person or group is acting as an employee as opposed to an independent contractor is:

Whether a contract gives, or the "employer" assumes the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain results.

Anderson v. Farm Bureau Insurance Company, 112 Idaho 461, 732 P.2d 699 (Idaho App. 1987).

Thus, if the Idaho Centennial Commission has no right to control and it does not control the time, manner and method of conducting the local centennial activities, then the local committees would normally be viewed as independent contractors rather than employees of the commission. Consequently, based upon our understanding of the normal relationship between the commission and local committees, it is unlikely the commission would be liable for tort claims based upon local centennial events.

Circumstances could arise in which the Idaho Centennial Commission could be liable for acts of an independent contractor. The Idaho Supreme Court found that a city may be found liable for property damages caused by an independent contractor's blasting when city officers, after due notice of the dangerous condition, failed to remedy the dangerous condition. Lundahl v. City of Idaho Falls, 78 Idaho 338, 303 P.2d 667 (1956). The Lundahl case illustrates the potential for governmental entities' broad liability for failure to act when placed on notice of a hazard or dangerous condition.

#### D. Tort Claims Act Exemptions.

The Idaho Tort Claims Act exempts governmental entities from liability in several circumstances. Idaho Code §§ 6-904, 6-904A, 6-904B. Of these listed exceptions, one of particular significance to the Idaho Centennial Commission is the exception set forth at Idaho Code § 6-904(1). It has been called the "discretionary function" exception to liability. It states:

Exceptions to Governmental Liability. - A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent shall not be liable for any claim which:

1. Arises out of any act or omission of an employee of the governmental entity

exercising ordinary care, in reliance upon or the execution or performance of a statutory or regulatory function, whether or not the statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion is abused.

The court in Sterling v. Bloom, 111 Idaho 211, 723 P.2d 755 (1986), adopted the "planning/operational test" for determining whether an act is discretionary and immune under § 6-904(1). The court, shortly after the Sterling v. Bloom decision, provided clarification of the "planning/operational" test in Jones v. City of St. Maries, 111 Idaho 733, 727 P.2d 1161 (1986). The court said:

The planning/operational test provides immunity for planning activities - activities which involve the establishment of plans, specifications and schedules where there is room for policy judgment in decisions. Operational activities - activities involving the implementation of statutory and regulatory policy - are not immunized and, accordingly must be performed with ordinary care. [Citations omitted.]

Jones v. City of St. Maries, supra, at 735-736.

The authority granted to the Idaho Centennial Commission by Idaho Code § 67-1990 is "to plan and coordinate activities relating to the celebration of this centennial of Idaho's statehood." It would appear that these functions would generally fall within the discretionary function exception of Idaho Code § 6-904(1). It is our understanding the commission is normally involved only in planning activities as defined in Jones supra, (i.e., establishment of plans, specifications and schedules where there is room for policy judgment in decisions). We understand the commission is not involved in the operational activities. Thus, the "discretionary function" exception from liability should normally provide protection for the commission's activities.

E. Volunteer Liability.

You have asked us if volunteers involved in local centennial events are protected from claims by the Idaho Tort Claims Act. In our opinion, they are protected by the act. If sued, they would be defended and indemnified to the same extent as other employees of a governmental entity. As noted previously, Idaho Code § 6-902(4) defines employee to include "persons acting on behalf of the governmental entity in any official capacity . . . whether with or without compensation." Consequently, it is not material that volunteers do not receive compensation for purposes of the tort claims act. Also, volunteers would normally be acting pursuant to instructions of local committee officials and thus would not be acting as independent contractors.

Local committees are officially appointed by resolutions of the boards of county commissions. Based upon these resolutions, we concluded above that local committees would probably be viewed as acting officially on behalf of the counties rather than on behalf of the commission. However, whether viewed as acting on behalf of the commission or the counties, volunteers for local committees would be acting in an official capacity on behalf of a governmental entity. Therefore, in our opinion, they would be protected from personal liability to the same extent as other employees of a governmental entity.

The opinions expressed above are intended to address general liability issues based upon our understanding of the normal relationships among the commission, the counties and the local centennial committees. However, the results in any given case will depend upon the specific facts involved. Depending upon the specific facts, other issues might also be raised. Hopefully, the general discussion above will be of assistance to you.

AUTHORITIES CONSIDERED:

Cases

Anderson v. Farm Bureau Insurance Company, 112 Idaho 461, 732 P.2d 699 (Idaho App. 1987).

Continental Forest Products, Inc. v. Chandler Supply Company, 95 Idaho 739, 518 P.2d 1201 (1974).

Jones v. City of St. Maries, 111 Idaho 733, 727 P.2d 1161 (1986).

Just's, Inc. v. Arrington Construction Company, 99 Idaho 462, 583, P.2d 997 (1978).

Martin L. Peterson  
Centennial Commission  
Page 8

Lundahl v. City of Idaho Falls, 78 Idaho 338, 303 P.2d 667 (1956).

Sines v. Sines, 110 Idaho 776, 718 P.2d 1214 (1986).

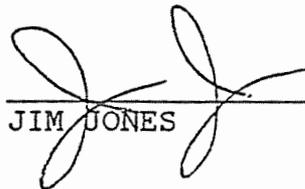
Sterling v. Bloom, 111 Idaho 211, 723 P.2d 755 (1986).

Statutes

Idaho Code § 6-902.  
Idaho Code § 6-904.  
Idaho Code § 6-904A.  
Idaho Code § 6-904B.  
Idaho Code § 67-1990.

DATED this 16th day of October, 1989.

JIM JONES  
Attorney General  
State of Idaho

  
A horizontal line is drawn across the page, with the name "JIM JONES" printed below it. The handwritten signature of Jim Jones is written over the line, extending to the right.

Analysis by:

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