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March 30, 1989

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

Re: Public Hearings

Dear Mr. Nelson:

This letter is in response to your request dated March 17, 1989, on whether the Caribou County Planning and Zoning Commission and the Caribou County Commissioners may hold a public hearing in the L.D.S. Church in Freedom, Wyoming. I have answered your questions in the order you posed them.

I. Whether The Board Of County Commissioners Is Required To Hold Its Meetings In The County Seat Of The County.

Idaho law requires regular meetings of the board of county commissioners to be held in the county seat. Idaho Code § 31-710 ("The regular meetings of the boards of commissioners must be held at their respective county seats. . . ."). Therefore, all regular meetings of the Caribou County Commissioners must be held in Soda Springs, the county seat. The Board may not change that location. See, Hobbs v. Abrams, 104 Idaho 205, 207, 657 P.2d 1073 (1983) (County regulations and ordinances must not conflict with state statutes).

The statute does not, however, require a particular location for "[s]uch other meetings . . . as are prescribed by law or provided for by the board." *Id.* As the governing board over the Planning and Zoning Commission, the Board of County Commissioners is required to hold at least one public meeting before acting on any recommendations from the Planning and Zoning Commission.

Idaho Code § 67-6509(b). Meetings held pursuant to Idaho Code § 67-6509(b) are not "regular" meetings under Idaho Code § 31-710 and therefore are not required to be held in the county seat. Idaho Code § 67-6509 requires only that the public receive fifteen days' notice of the time and place of the hearing. The statute, unlike Idaho Code § 31-710, does not specify a place for the hearing. Accordingly, the commissioners may conduct a public hearing for Idaho Code § 67-6509 purposes outside of the county seat.

This conclusion is also supported by the policy behind the requirement of public hearings on zoning regulations. The provision gives all interested people an opportunity to be heard, which ensures the zoning decision is based on informed opinion. This purpose would be defeated if the public hearings could not be held in the location most convenient for those affected. To effectuate the intent behind the statutory requirement of public hearings on zoning matters, those hearings should be held in the locations most accessible for the greatest number of people.

In conclusion, the answer to your first question depends on the nature of the meeting. The commissioners must hold their regular meetings in the county seat. However, with the proper notice the commissioners may hold public hearings required by Idaho Code § 67-6509 in a different location.

II. Whether The Caribou County Planning And Zoning Commission Is Required To Hold Its Meetings In The County Seat.

Unlike county commissioners, planning and zoning commissions are not required by law to meet in a particular place. See Local Planning Act of 1975, Idaho Code §§ 67-6501 through 67-6533 (Act creating and defining the duties of planning and zoning commissions). Furthermore, the law explicitly states, "As part of the planning process, a planning or zoning commission shall provide for citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation." Idaho Code § 67-6507. Idaho Code § 67-6509(a) also requires at least one public hearing before the Planning and Zoning Commission makes any recommendations regarding the adoption, amendment or repeal of any zoning plan. Clearly, the legislature intends public opinion to play an important role in any planning or zoning decision. In order to effectuate this intent, the public hearings of the Planning and Zoning Commission

should be held in the location most convenient for the affected public. Furthermore, "[t]he weight of authority would seem to be that wide discretion is given administrative officials in determining matters such as the place for conducting hearings within a state." Burri v. Campbell, 434 P.2d 627, 629 (Ariz. 1967). Therefore, the Caribou County Planning and Zoning Commission is not required to hold its public hearings in the county seat.

III. The Procedure In Holding The Public Hearings Outside The County Seat.

The notice required for public hearings in zoning matters is outlined in Idaho Code § 67-6509(a). This procedure applies to the public hearings required by both the planning and zoning commission, Idaho Code § 67-6509(a), and the board of county commissioners, as the governing board, Idaho Code § 67-6509(b). At least fifteen (15) days before the scheduled public hearing, a notice of the time and place and a summary of the proposed plan must be published in the official newspaper of the jurisdiction. Similar notice must be given to all the other papers, radio and television stations serving the jurisdiction for use as a public service announcement. After the hearing, if the commission makes a material change in its recommended plan, then it must conduct another public hearing with the required notice on the amended plan. A record of the public hearings, the findings made and the actions taken must also be maintained.

IV. Whether Public Meetings May Be Held Outside The State Of Idaho.

There is no explicit requirement that the public hearings held pursuant to Idaho Code § 67-6509 be conducted inside the State of Idaho. As noted above, the purpose of the public hearings is to provide an opportunity for members of the public to voice their concerns. Every effort should be made to accommodate the public. In this situation, the citizens of Freedom, Idaho, will be most affected by the proposed amendments and their opinions, if at all possible, should be considered in the final decision. The best means to accomplish that goal is to conduct a public hearing in the Freedom area. If the distance or the condition of roads between Freedom, Idaho, and the county seat or another Idaho location would truly prevent Freedom citizens from attending a public hearing in Idaho and if the only location large enough to accommodate the expected number of people is across the border in Wyoming, then the hearing should be conducted in Wyoming. To find otherwise would be to thwart the clear statutory intent of encouraging public participation in the zoning process. However, I urge you to consider carefully the alternatives. Such a procedure is highly unusual and can only be rationalized by the idiosyncrasies of Idaho topography

and the strong policy of public participation in the zoning process.

It must be emphasized that this conclusion is limited to the facts of your situation. I do not mean to imply that county commissioners or their appointed agencies may arbitrarily and capriciously decide to hold public meetings outside their jurisdiction. Article 18, section 7, of the Idaho Constitution states that "[a]ll actual and necessary expenses incurred by any county officer or deputy in the performance of his official duties, shall be a legal charge against the county. . . ." In the fact situation you pose, the commissioners' trip to Freedom, Wyoming, to conduct a public hearing for the residents of Freedom, Idaho, arguably would be necessary. Under article 18, section 7, they would be reimbursed for their expenses. This contrasts with the hypothetical situation where the commissioners decide to hold a public hearing out of state in, for example, Hawaii. Such a decision would not be based on the strong policy reasons underlying your set of facts, and accordingly the constitution might preclude the reimbursement of their expenses. If an irate constituent disapproved of the commissioners' action, the commissioners might have to defend the necessity of the Wyoming trip in court.

Finally, and most importantly, if public meetings pursuant to Idaho Code § 67-6509 are held outside the county, the final decision MUST be made within the county. Under Idaho Code § 67-6521(d), an aggrieved party may seek judicial review of a final decision "under the procedures provided by sections 67-5215(b) through (g) and 67-5216, Idaho Code." Idaho Code § 67-5215(b) grants jurisdiction to the district court of "either the county in which the hearing was had or the county in which the final decisions of the agency was made." If the commissioners conduct a public hearing in Freedom, Wyoming, and then issue their final decision in front of their constituents in Wyoming, there would be no court with jurisdiction to review the action. Such a scenario would clearly be unconstitutional. To avoid this legal quagmire, the commissioners should be careful to issue their final decision in their county.

V. Whether The Public Hearing May Be Held In A Church.

As long as the meeting is open to all members of the public, there should be no problem with conducting the hearing in the church. All necessary steps should be taken to ensure that members of the public, especially those who are not members of the particular church, are not inhibited in voicing their opinions because of the location. The use of a church by the county government in this situation does not trigger the religion clauses of the first amendment, which prohibit the making of any law respecting the establishment of religion or the free exercise

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of religion. The Idaho constitutional provisions also would not apply. Article 1, section 4, and article 21, section 19, of the Idaho Constitution guarantee religious liberty to the citizens of Idaho; article 9, section 5, prohibits public entities appropriating money for sectarian purposes. The mere use of a building that happens to be a church, without more, should not be a problem. Clearly, members of the church would have to agree that the area of the public meeting would be unequivocally open to the public.

VI. Conclusion

In conclusion, public hearings held pursuant to Idaho Code § 67-6509 need not be held in the county seat. There is no explicit law that requires such meetings be held in Idaho, but such a practice is unusual and may create unforeseen problems. If at all possible I would urge you to conduct the Freedom meeting on the Idaho side of the border. If there is no alternative but the church in Freedom, Wyoming, then I urge you to maintain a complete record of the reasons for your decision, i.e., the lack of adequate facilities in Idaho and the difficulty for the citizens of Freedom to travel to another Idaho location. Also, the public hearing should be limited to fact-finding only, no decision should be made at the meeting. The record would be essential if an irate citizen decided to challenge the proceedings.

Your decision to conduct one of the public hearings in the county seat is a wise one and should be effectuated. The meeting at the county seat would satisfy the statutory requirements of the Local Planning and Zoning Act. The Wyoming hearing could, therefore, be characterized as a good faith gesture of accommodating the needs of the affected public. It would be difficult to question the validity of the Wyoming hearing if it was solely for the convenience of the local Idaho residents, and not intended to satisfy any statutory requirements.

Sincerely,

PRISCILLA HAYES NIELSON
Deputy Attorney General