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April 12, 1989

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

Re: Ada County Highway District Commissioners ---
Conflicts of Interest

Dear Mr. Mack:

In your letter of March 10, 1989, you pose a scenario where the Ada County Highway District intends to create a local improvement district (LID). However, two of the three district commissioners have disqualified themselves from acting on the proposal because of conflicts of interest that are not defined in your letter. Consequently, you ask:

[W]hether the remaining Commissioner can properly vote on the local improvement district proposal with said vote being a proper exercise of the powers of The District.

Idaho Code § 40-1406, which pertains to single county-wide highway districts such as Ada County, provides in pertinent part:

The Commissioners of a county-wide highway district may pass ordinances, rules, and make all regulations, not repugnant to law, as necessary, for carrying into effect or discharging all powers and duties conferred to a county-wide highway district pursuant to this

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chapter and chapter 13 of this title. All ordinances created or passed by the commissioners of a county-wide highway district shall require the affirmative vote of two-thirds (2/3) of the members of the full county-wide highway district commission.

The statute is clear and unambiguous: all ordinances require the affirmative vote of at least two members of the full commission. Thus, if two members abstain from voting, no ordinance can be validly enacted.

If either of the commissioners is declaring a conflict because of ownership of property within the proposed district, that concern is misplaced. Ownership of property within or deriving a benefit from an LID does not create a conflict of interest barring a commissioner from voting on or administering the district.

The Idaho Supreme Court recently addressed this very issue in Simmons, et al. v. City of Moscow, 111 Idaho 14, 720 P.2d 197 (1986). The council members for the city of Moscow owned property within the boundaries of the proposed LID which was the subject of that case. Other property owners challenged the council members' participation in creation of the district on the ground that their financial interest in the district created a conflict of interest sufficient to disqualify them from voting on the matter.

The Simmons court held that "the ownership of property in a local improvement district does not disqualify a council member from participating in proceedings to form a LID or assess property levies." Simmons v. City of Moscow, 111 Idaho at 18 (citations omitted) (emphasis in original). The court gave three reasons for finding there is no conflict in this type of situation. First, although there is a special benefit derived from an LID, there also is a special assessment levied. Second, the council member is not the sole beneficiary, but all property owners benefit from the LID. Finally, the court reasoned that this type of disqualification would often prohibit a governing body from performing its functions because of a lack of a quorum. Id.

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The Idaho Supreme Court's holding in Simmons applies to highway district commissioners, as well as to city council members. The mere fact of property ownership within the county, or district, or LID, does not serve to disqualify public officials from voting on proposals that affect their property rights in a generalized manner.

Since no request was made to evaluate whether the two commissioners have a valid basis for their declared conflicts, no further specific analysis of the conflicts issue can be made. Should the two highway district commissioners continue to maintain that they have a conflict and abstain from voting on the proposed LID, such an action will prevent the district from creating the LID.

You mentioned a letter written by Mike Moore about ten years ago that addressed the issue of voting abstentions on a city council. That letter is not applicable to the facts of this case because the statutes governing voting requirements for city councils are different from those governing highway commissions.

This letter is provided to assist you. The response is an informal and unofficial expression of the views of this office based upon the research of the author. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division