



**STATE OF IDAHO**

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May 16, 1989

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

Dear Mr. Dunn:

This letter addresses your request for an opinion regarding the Jefferson County Sheriff. Your letter states that the Sheriff is currently billing the city of Ririe for law enforcement but is not billing other cities within the county. You have asked for an opinion as to the duties of the sheriff pertaining to felonies, misdemeanors, juvenile cases, child protection matters, infractions and cases involving violations of ordinances in cities that have not contracted for law enforcement services as compared to cities that have so contracted.

In analyzing your question, it is appropriate to begin with the Idaho Constitution's grant of police power to public entities within the state. Article 12, § 2, states in its entirety:

Local police regulations authorized. -- Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

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Thus, the Idaho Constitution authorizes a city to enact penal ordinances for the welfare of its residents so long as those ordinances do not conflict with the city's charter or the state's general laws.

Juxtaposed with article 12, § 2, is Idaho Code § 31-2227 which vests primary jurisdiction for enforcement of state penal laws in the county sheriff:

Irrespective of police powers vested by statute in state, precinct, county, and municipal officers, it is hereby declared to be the policy of the State of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties. . .

When in the judgment of the governor the penal laws of this state are not being enforced as written, in any county, or counties, in this state, he may direct the director of the department of law enforcement to act independently of the sheriff and prosecuting attorney in such county, or counties, to execute and enforce such penal laws. (Emphasis added.)

From this, it is clear that a sheriff has a duty to enforce state penal laws within the boundaries of a city regardless of whether that city has a police department or not. There is no requirement that the city reimburse the sheriff for enforcing state penal laws within city boundaries. Indeed, a city need not hire police officers to enforce state laws at all and may rely upon the sheriff in this area. Idaho Code § 50-209 states:

The policemen of every city, should any be appointed, shall have power to arrest all offenders against the law of the state, or of the city, by day or by night, in the same manner as the sheriff or constable. (Emphasis added.)

In State v. Whelan, 103 Idaho 651, 651 P.2d 916 (1982), the Idaho Supreme Court interpreted this statute to mean that "the decision to appoint police officers is entirely discretionary

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with the municipality." As stated previously in an opinion of this office:

It is indisputably clear that the sheriff has the constitutional and statutory responsibility to enforce the state laws within his county irrespective of any efforts made or omitted by the policemen of any cities within his county. The county sheriff should not view the appointment of city police officers as supplanting his authority within the county but rather as aiding him in carrying out his responsibility to see that the state's criminal statutes are vigorously executed within his county.

1984 Attorney General Opinion No. 84-4, p. 39.

However, the fact that a county sheriff has the duty to enforce state penal statutes within a city does not mean that the sheriff has the power to enforce penal city ordinances. In Clyde Hess Distributing Co. v. Bonneville County, 69 Idaho 505, 210 P.2d 798 (1949), the Idaho Supreme Court made it clear that counties did not have the constitutional authority to make police regulations effective within a municipality. The question was described as one of constitutional power rather than one of conflicts of law. This view was later refined by the court in Boise City v. Blaser, 98 Idaho 789, 572 P.2d 892 (1977). In that case, the court stated that article 12, § 2, establishes the separate sovereignty of political entities within a county as a safeguard against county/city jurisdictional conflicts of police power.

From these cases, it follows logically that a sheriff, in his role as county sheriff, cannot enforce city ordinances as he is the agent of a separate political entity. Therefore, if a city does not provide for police officers, its penal ordinances will go unenforced absent an agreement with a separate political entity to provide police protection. This is the message of the seminal case of State v. Quong, 8 Idaho 191, 67 P. 491 (1902), which holds that the burden of enforcing municipal police regulations should be placed upon cities rather than the state or counties. See also, Idaho Code § 50-602, which states that it is the duty of the mayor of a city to see that city ordinances are enforced.

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In summary, it is apparent that a county sheriff and a city's police officers have joint jurisdiction to enforce all state penal laws within the city limits, regardless of whether they are felonies, misdemeanors or infractions. As to infractions, this is further reinforced by Idaho Code § 31-2202.12(d) which makes it the duty of the county sheriff to work concurrently with the Idaho State Police in regulating traffic on all highways and roads in the state.

Because state penal laws apply equally to all persons, the fact that a person investigated may be a juvenile does not rob the sheriff of his authority and duty in this area, and the method of handling the juvenile in the court system under the Youth Rehabilitation Act is of no significance. Although actions under the Child Protection Act cannot properly be described as "penal," the act itself grants power to "peace officers" to shelter children. Idaho Code §§ 16-1612 and 16-1613. The county sheriff and his deputies are clearly peace officers within the meaning of the Child Protection Act, even when acting within the confines of a city.

The county sheriff does not have authority to enforce county ordinances within a city's limits, nor does he have the power to enforce city ordinances, absent an agreement by the city to contract for such services from the county sheriff. In Idaho, public entities are encouraged to "make the most efficient use of their powers" and are permitted to "cooperate to their mutual advantage and thereby provide services and facilities and perform functions in a manner that will best accord with geographic, economic, population, and other factors influencing the needs and development of the respective entities." Idaho Code § 67-2326. Hence, counties and cities are permitted to enter into agreements with each other in order to provide services and facilities in keeping with these principles. Idaho Code § 67-2327 through § 67-2333.

A city, in lieu of hiring its own police force, may find it more profitable to contract with the county sheriff to increase the sheriff's manpower and provide extra protection within the city limits. Such an agreement could provide for a resident deputy, extra patrol, or enforcement of city ordinances. The governing bodies of both the city and the county must consent to such an agreement, Idaho Code § 67-2328, and the county sheriff may not benefit personally from such a contract, Idaho Code § 59-201.

In summary, it is not illegal or inappropriate for a county sheriff, with the consent of the county commissioners, to

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contract with a city council to provide for enforcement of city ordinances, a resident deputy, increased manpower or other services that would satisfy the city that it is being properly protected from criminal activity. This is similar in concept to the power of full-time prosecuting attorneys to contract with cities in the prosecution of city misdemeanors under Idaho Code § 31-3113.

Your letter does not provide enough facts to allow for a judgment about specific situations occurring in your county. If the sheriff is providing equal assistance to each city in accordance with his statutory duties while charging Ririe and not the other cities, this would not be appropriate.

On the other hand, if the sheriff is providing increased law enforcement for the city of Ririe in accordance with a contract which meets the requirements of Idaho Code § 67-2327 through § 67-2333, such a practice would be entirely legal.

Sincerely,

MICHAEL KANE  
Deputy Attorney General  
Chief, Criminal Law Division