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

Re: Conflict of Interest

Dear Mr. Smyser:

You asked the Office of the Attorney General to address the possible conflict of interest in two cases where city councilmen were personally involved in municipal contracts. The statute on point is Idaho Code § 59-201, which states:

Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

Idaho courts have never defined "interest," but it probably requires something more than a tangential and minimal interest. See Informal Guideline, 1986 Idaho Attorney General Annual Report 110, at 111 ("reasonable limit should be placed on defining what an 'interest' is. . . ."). The 1986 Informal Guideline indicated that "the kind of 'interest' referred to is probably a financial interest, either direct or indirect." Id.

A second statute that relates to the issue is Idaho Code § 59-202, which states:

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State, county, district, precinct and city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

The purpose of these two statutes is to prevent public officers from acting on behalf of their private interests to the detriment of their public duty. According to McRoberts v. Hoar, 28 Idaho 163, 175, 152 Pac. 1046 (1915):

It is the relation that the law condemns and not the results. It might be that in this particular case public duty triumphed in the struggle with private interest, but such might not be the case again or with another officer; and the policy of the law is not to increase temptations or multiple opportunities for malfeasance in office.

In Nampa Highway District No. 1 v. Graves, 77 Idaho 381, 293 P.2d 269 (1956), taxpayers challenged the payment to the highway district commissioners for services performed pursuant to a contract between the highway district and the commissioners as private individuals. The Idaho Supreme Court stated:

The contract of employment in question interferes with the unbiased discharge of respondents' duties to the public as commissioners and places them in a dual position inconsistent with their duties as trustees for the public and all such contracts are invalid even if there be no specific statute prohibiting them. The law invalidating such a contract is based on public policy and the contention that there was no loss to the highway district is no defense.

More recently, the Office of the Attorney General stated that "the law of Idaho prohibits payment to a mayor for additional or outside services, even though unrelated to that person's official duties, even in the absence of fraud, and even where the taxpayers actually benefit thereby." Legal Guideline, 1981 Attorney General Annual report, 202, at 203.

Therefore, both case law and statutory law clearly prohibit members of a city council from contracting with the city. This principle of law would prohibit Councilman Houchins from contracting with the city of Caldwell to provide a souvenir concessionaire at the Events Center. Nampa Highway District No. 1 is directly on point with the Houchins case: both cases involve individuals contracting with a public entity of which they are board members. Just as the practice was prohibited in Nampa Highway District No. 1, so should the contract between Houchins and the city of Caldwell be prohibited.

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The case of Councilman Jarboe is not so clear cut. It appears from your letter that the councilman is involved in a non-profit organization that does business with the city. The councilman's role and remuneration in the organization is not clear. In the informal guideline issued in 1986, supra, our office found that Idaho law allowed the director of the YWCA Women's Crisis Center and Rape Crisis Alliance to serve on the Idaho Council on Domestic violence. The director agreed not to participate in the decisions for grants within her health and welfare district. Our office determined that the non-profit status of the corporation, the fixed salary of the director, and the lack of private commercial interest were dispositive of the issue.

Another factor that played an important role in the opinion was the nature of the position. The Idaho statute required council members to be "interested and concerned members of the general public" with regard to domestic violence. Therefore, a too expansive reading of Idaho Code § 59-201 would "frustrate[] qualified, competent individuals from serving on the council." Id. at 112. It does not appear that such a policy plays a role in the Jarboe set of facts. Certainly, however, the policy behind the conflicts of interest statutes is to prevent individuals from using their public positions for private gain. That policy does not apply to the Jarboe facts, where the only personal advantage to Councilman Jarboe appears to be some intangible eleemosynary satisfaction.

Therefore, if Witco, like the YWCA Crisis Center, is non-profit, and if Councilman Jarboe, like the director of the Crisis Center, is a salaried employee with no private commercial interest in the contract, then under the reasoning of our previous informal legal guideline there is no conflict of interest. The councilman, however, should not participate in any matter before the city council concerning Witco.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

PRISCILLA HAYES NIELSON
Deputy Attorney General