



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

September 1, 1989

Donald J. Chisholm
CHISHOLM & BRADLEY, Chtd.
P.O. Box 1118
Burley, Idaho 83318

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

Re: Constitutionality of Idaho Code § 31-1409
A.G. Reference No. 7928

Dear Mr. Chisholm:

You have requested the position of this office on the constitutionality of Idaho Code § 31-1409. Section 31-1409 provides for the election of fire protection commissioners and states, in part:

Commissioners appointed and elected must be electors and freeholders resident within the district for at least one (1) year.

The issue presented is whether the statutory requirement that a fire protection commissioner be a "freeholder" or property owner is constitutional.

Article 1, § 20 of the Idaho Constitution provides:

No property qualifications shall ever be required for any person to vote or hold office except in school elections, or elections creating indebtedness, or in irrigation district elections, as to which last-named elections the legislature may restrict the voters to land owners.

Celebrate
IDAHO
1890 • CENTENNIAL • 1990

Donald J. Chisholm
September 1, 1989
Page 2

The election for fire district commissioners is not a school election or an irrigation district election, and it does not create indebtedness. Therefore, the § 31-1409 requirement that a fire protection commissioner be a freeholder violates art. 1, § 20 of the Idaho Constitution.

Additionally, property qualifications for voting or holding office have been found to violate the Equal Protection Clause to the United States Constitution unless the purpose of the election or the office is directly linked with land ownership. Quinn v. Millsap, 109 S.Ct. 2324, 105 L.Ed.2d 74 (1989); Johnson v. Lewiston Orchards Irrigation Dist., 99 Idaho 501, 584 P.2d 646 (1978). Residents of the fire protection district who do not own land have a considerable interest in fire protection. See id. at 504-505, 584 P.2d at 649-50. Thus, the § 31-1409 land ownership requirement for the position of fire protection commissioner also violates the United States Constitution.

Sincerely,

Daniel G. Chadwick

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division

DGC/mkf

cc: Major General James S. Brooks