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November 22, 1989

Mr. Ivan Legler
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Runoff Elections Under Idaho Code § 50-612

Dear Mr. Legler:

Your letter to Dan Chadwick dated November 6, 1989, concerning the upcoming runoff election for mayor of Pocatello was referred to me for response. Specifically, you ask whether, under Idaho Code § 50-612 and Pocatello Municipal Code § 2.04.200, a third candidate may run as a write-in candidate in the runoff election along with the two candidates who received the highest number of votes in the recent general election.

Idaho Code § 50-612 clearly and unambiguously provides a city with authority to enact an ordinance requiring the mayor of the city to be elected by a majority of votes and providing, in the event no candidate receives a majority of votes cast at the general election, for a runoff election "between the two candidates receiving the highest number of votes cast." Both Idaho Code § 50-612 and Pocatello Municipal Ordinance § 2.04.200 leave no doubt that only those two candidates are eligible to run in the runoff election. Where the language of a statute is unambiguous, the clear expressed intent of the legislature must be given effect. Ottesen v. Board of Commissioners of Madison County, 107 Idaho 1099, 1100, 695 P.2d 1238, 1239 (1985); Worley Highway District v. Kootenai County, 98 Idaho 925, 928, 576 P.2d

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Mr. Ivan Legler
November 22, 1989
Page two

206, 209 (1978). Allowing a third candidate to run in the runoff election would contravene the plain language of the state statute and city ordinance.

Runoff election statutes and ordinances similar to Idaho Code § 50-612 and Pocatello Municipal Code § 2.04.200 are commonplace in other states and have been upheld as a constitutionally permissible exercise of legislative power over the election process. See, e.g., Butts v. City of New York, 779 F.2d 141 (2d Cir. 1985); Procaccino v. Board of Elections of the City of New York, 341 N.Y.S. 2d 810, 73 Misc. 2d 462 (1973). In Procaccino, the court rejected the contention that a New York runoff election law violates state and federal constitutional guarantees of the right to vote and equal protection:

"Since there must be limitations and systemization in the exercise of the elective franchise in order that it may be practicable, efficient, intelligent, and honest, legislative regulations which are reasonable and not discriminatory, cannot rightfully be said to contravene any constitutional right; the courts cannot condemn restrictions for a legitimate purpose reasonably adapted to effect such purpose" (18 N.Y. Jur., Elections § 80). Here, no voter is disenfranchised or deprived of the right to vote as given under the Constitution and laws of this state. The challenged provision gives the voters entitled to vote in the primary elections the opportunity to choose between the two highest candidates for their party's nomination for each of the enumerated offices, where no candidate for such office receives forty percent or more of the votes cast. This enactment, it is hoped, will affirmatively implement the reality of representative government by reflecting a more valid consensus of the party members.

341 N.Y.S. 2d at 818. Idaho Code § 50-612 likewise serves the legitimate purpose of allowing a city to ensure that its mayor is elected by and represents a majority of the voters in the city. The runoff election scheme narrows the election to the two candidates receiving the highest number of votes so that a majority can be achieved. If write-in candidates are allowed to run in runoff elections, the likelihood of one of the candidates receiving a majority of the votes is reduced, defeating the central and legitimate policy served by the runoff election process.

As a matter of straightforward statutory construction and as a matter of sound and permissible electoral policy, write-in

Mr. Ivan Legler
November 22, 1989
Page three

candidates should not be allowed to run in runoff elections authorized under Idaho Code § 50-612.

If you have any further questions regarding this matter, please do not hesitate to call.

Sincerely,



ERIC E. NELSON
Deputy Attorney General
Intergovernmental & Legislative Affairs

EEN/dp

cc Bill Jarocki, AIC
Chuck Holden, IAC
Ben T. Ysursa