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December 12, 1989

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

Re: Responsibility and Authority of the Prosecuting Attorney and
City Attorney - Relationship of Idaho Code §§ 31-2604,
50-208A and 31-2227

Dear Mr. Robinson, Ms. Hoff and Mr. Boomer:

You have requested advice on matters pertaining to the 1989 amendment to Idaho Code § 31-2604 and enactment of Idaho Code § 50-208A, which deal with the duties of the prosecuting attorney and city attorney respectively. Specifically, your inquiries pose three questions:

a. When a citation or criminal complaint is issued by a state or county employee for a state traffic infraction, state misdemeanor or violation of a county ordinance occurring within the city limits, must the

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prosecution be done by the city attorney rather than the county prosecuting attorney?

b. When a city contracts with the county sheriff for law enforcement protection, who is financially responsible for the prosecution of misdemeanor and infraction cases when the citation has been issued by the county sheriff for offenses which occurred within the city limits?

c. Does a city attorney have authority or responsibility to file a petition under the Youth Rehabilitation Act?

SHORT ANSWER:

a. When the arresting officer is either a state or county employee, both the prosecuting attorney and the city attorney have authority and responsibility to prosecute violations of state traffic infractions and state misdemeanors committed within the municipal limits. County ordinances are of no effect within municipal limits.

b. Neither Idaho Code §§ 31-2604, 50-208A(2), nor 31-2227 resolve the question of who has the financial responsibility for prosecutions which arise where there is concurrent authority and responsibility. Because of this concurrent authority and responsibility, this is an area which must be handled by negotiations between the city and the county.

c. The city attorney has the authority to file a petition pursuant to the Youth Rehabilitation Act in the same manner in which a prosecuting attorney could where the violation is of a city ordinance or state misdemeanor committed within the municipal limits by a minor.

ANALYSIS:

A. Analysis as to the Duty and the Authority to Prosecute.

The 1989 enactment of Idaho Code § 50-208A clearly provides the city attorney with the authority and duty to prosecute all violations of "city ordinances, state traffic infractions, and

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state misdemeanors committed within the municipal limits." ¹ The wording of this statute -- namely, that the city attorney "shall" prosecute such violations -- could be read to give the city attorney sole and exclusive jurisdiction to prosecute such violations. It is our opinion that the legislature did not intend this result.

First, the statute spelling out these duties of the city attorney was part of House Bill No. 357, enacted by the 1989 legislature. The other part of the bill was an amendment to Idaho Code § 31-2604, the basic statute spelling out the "duties of the prosecuting attorney." The two parts of the bill must be read in pari materia. Subsection 2 of Idaho Code § 31-2604 makes it a duty of the prosecuting attorney "to prosecute all misdemeanor or infraction actions for violation of all state laws or county ordinances when the arresting or charging officer is a state or county employee." Thus, the county prosecutor clearly has concurrent authority, along with the city attorney, to prosecute violations of state misdemeanors and traffic infractions committed within municipal boundaries, if the arresting officer is a state or county employee.

A more difficult question arises as to whether the prosecuting attorney has authority to prosecute violations of state laws if the arresting officer is a city employee. Again, it is the opinion of this office that the newly enacted provisions of Idaho Code § 50-208A were not intended to divest the prosecuting attorney of his long-standing authority to prosecute such violations. In 1951, the Idaho Legislature enacted Idaho Code § 31-2227, which provides:

Irrespective of police powers vested by statute in state, 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.

¹ Idaho Code § 50-208A also provides authority for the city attorney to prosecute violations of "county ordinances" committed within the municipal limits. Since county ordinances have no effect within municipal limits, State v. Robbins, 59 Idaho 279, 81 P.2d 1078 (1938); Clyde Hess Distrib. Co. v. Bonneville County, 69 Idaho 505, 210 P.2d 798 (1949); Hobbs v. Abrams, 104 Idaho 205, 657 P.2d 1073 (1983), this provision can have no application.

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Pursuant to this statute, the county prosecuting attorney has the primary duty to enforce all the penal provisions of any and all statutes of this state. ²

Nothing in the legislative history of House Bill No. 357 indicates that the legislature intended to repeal the provision of Idaho Code § 31-2227 placing the primary duty on the county prosecuting attorney to prosecute all violations of state penal provisions. On the contrary, at the March 22, 1989, meeting of the Senate State Affairs Committee, Ivan Legler, City Attorney for Pocatello and the individual responsible for the initial draft of this bill, testified that because of the ambiguity of the former law, some cases had been thrown out because "the proper prosecutor was not present." The sponsors of House Bill No. 357 proposed to resolve this problem by giving "prosecuting attorneys and city attorneys more flexibility in sharing personnel for prosecution." Statement of Purpose, House Bill No. 357. Thus, it is our conclusion that the legislature clearly intended that both the prosecuting attorney and the city attorney would have authority to prosecute violations of state laws committed within municipal limits, regardless of whether the arresting or charging officer was a city, county, or state employee.

To summarize our conclusion on this question: where (1) the arresting or charging officer is a state, county or city employee, (2) the law violated is a state misdemeanor or state infraction and (3) the violation occurs within the municipal limits, pursuant to the interplay of Idaho Code § 31-2227, the 1989 amendment of Idaho Code § 31-2604 and the 1989 enactment of Idaho Code § 50-208A, the county prosecuting attorney and the city attorney both have the duty and the authority to prosecute.

Where (1) the arresting or charging officer is a city employee, (2) the law violated is a city ordinance and (3) the violation occurs within the municipal limits, the county

² Idaho Code § 31-2227 makes it the primary duty of the prosecutor to enforce "all the penal provisions of any and all statutes of this state." One might argue that state traffic infractions are not included within this jurisdiction because they are not "penal" in nature. It is our opinion that such a result is not intended. It must be remembered that Idaho Code § 31-2227 was enacted in 1951, more than three decades before the reform of Idaho's traffic code. The reform of that code -- and the transformation of most traffic offenses from misdemeanors into infractions -- was not intended to oust the county prosecuting attorney from what had always been the prosecutor's duty to enforce such statutes.

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prosecuting attorney has no duty to prosecute unless he has entered into a written contract with the city to prosecute.

Thus, the only time concurrent authority and responsibility of the county prosecuting attorney and the city attorney for enforcement of offenses which occur within the municipality does not exist is when the law violated is either a felony or a city ordinance. If the offense is a felony, the county prosecuting attorney has sole authority to prosecute. If the offense is a violation of a city ordinance and there is no contract with the county prosecuting attorney, the city attorney has sole authority to prosecute.

B. Analysis as to Financial Responsibility for Prosecution.

Neither Idaho Code §§ 31-2604, 50-208A(2), nor 31-2227 resolves the question of who has the financial responsibility for a prosecution which arises where the county prosecuting attorney and the city attorney have concurrent authority and responsibility. Because of this concurrent authority and responsibility, this is an area which must be handled by negotiations between the city and the county. In these negotiations it should be kept in mind that Idaho Code § 31-2227 places the primary duty of enforcing penal statutes on the county prosecuting attorney.

When a city contracts with the county sheriff for law enforcement protection, that contract should specify who is responsible for the cost of prosecution. County law enforcement officers who are under contract with a city have dual roles as both city and county law enforcement officers when working within the limits of the municipality.

When, pursuant to Idaho Code § 31-2604(2), a written contract is entered into between the prosecuting attorney and a city, that contract should set forth the financial responsibility for the prosecution costs.

Where no contract has been entered into and there is concurrent authority and responsibility for the prosecution of the violation, it appears that the cost of prosecution should be born by the entity employing the attorney who actually prosecutes the violation.

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C. Authority of the City Attorney to File a Petition Under the Youth Rehabilitation Act.

The long-standing tradition in Idaho is that prosecuting attorneys prosecute actions under the Youth Rehabilitation Act. The provisions of chapter 18, title 16, of the Idaho Code seem to envision that the prosecuting attorney fulfill this role. Further, the prosecuting attorney generally has a close working relation with the juvenile probation office, which exercises a pivotal function in such cases. Finally, Idaho Juvenile Rule 26 provides that an action commenced under the Youth Rehabilitation Act may, at the discretion of the court, be expanded into a Child Protection Act proceeding -- which proceedings are clearly under the exclusive jurisdiction of the county prosecuting attorney. See Idaho Code § 16-1605.

Nonetheless, it is clear that the 1989 legislature, in enacting Idaho Code § 50-208A, gave the city attorney the same powers as the county prosecutor in prosecuting violations of city ordinances and state misdemeanors. It would seem to follow, as part of the greater flexibility and sharing of personnel envisioned by the sponsors of this statute, that the city attorney would have the authority to file a petition pursuant to the Youth Rehabilitation Act. It must be noted, however, that this does not authorize the city attorney to file an action when the violation would be a felony if committed by an adult.

Yours very truly,

MICHAEL KANE
Deputy Attorney General
Chief, Criminal Law Division

MK/mkf