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December 22, 1989

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

Re: Collective Bargaining by City Employees

Dear Mr. Brown:

Idaho Attorney General Jim Jones asked me to respond to your letter of November 17, 1989, in which you ask whether it is legal for the City of Kellogg to enter into collective bargaining with a union representative selected by a majority of the city's police department employees.

It is well settled under Idaho case law that neither federal nor state labor laws require public employers to bargain collectively with their employees. Local Union No. 370, Int'l Union of Operating Engineers v. Detrick, 592 F.2d 1045 (9th Cir. 1979); School District No. 351, Oneida County v. Oneida Education Ass'n, 98 Idaho 486, 567 P.2d 830 (1977); Local Union 283, Int'l Bro. of Elec. Workers v. Robison, 91 Idaho 445, 423 P.2d 999 (1967). Your letter raises the converse question of whether Idaho law permits a public employer to engage in collective bargaining with its employees.

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Idaho courts have held that a municipality may exercise only those powers granted to it or necessarily implied from the powers granted. City of Grangeville v. Haskin, 116 Idaho 535, 777 P.2d 1208 (1989). Where a general power or authority is given to municipalities, it carries with it by implication the municipalities' discretion as to the manner in which the power is to be carried out. Veatch v. Gibson, 29 Idaho 609, 617, 160 P. 1112 (1916); see also, Durand v. Cline, 63 Idaho 304, 119 P.2d 891 (1941) (ordinance sufficient in scope to justify city council's exercise of judgment).

Idaho statutes expressly provide collective bargaining rights for public employees only to firefighters and professional employees of school districts. See, Idaho Code §§ 44-1802 and 33-1271. In absence of express legislation authorizing a city to collectively bargain with other types of employees such as police department employees, such authority must be implied from the city's general power to contract, found in Idaho Code § 50-301, and from the city council's authority to prepare and approve an annual budget and annual appropriation ordinance itemizing and classifying expenditures by department, found in Idaho Code §§ 50-1002 and 50-1003.

Although no Idaho cases have dealt with the issue of whether municipalities or other political subdivisions of the state have the implied power to bargain collectively with their employees, the issue has received considerable attention by legal commentators and courts from other jurisdictions. See, Dole, Jr., State and Local Public Employee Collective Bargaining in the Absence of Explicit Legislative Authority, 54 Iowa L. Rev. 539 (1969); Annotation, Union Organization and Activities of Public Employees, 31 A.L.R.2d 1142 (1953).

In a very recent New Mexico Supreme Court opinion, Local 2238 of the American Federation of State, County and Municipal Employees, AFL-CIO v. Stratton, 108 N.M. 163, 769 P.2d 76 (1989), the court summarized case law throughout the country concerning implied collective bargaining authority. The court explained that it is the opinion in a majority of jurisdictions that, absent express statutory authority, public officials or state agencies do not have authority to enter into collective bargaining agreements with public employees. A minority of jurisdictions, however, espouse the position that in the absence of express statutory authority to bargain collectively, a general grant of power may imply the necessary means for carrying into execution the power granted. 769 P.2d at 80-81. After recognizing that collective bargaining had been allowed in the public sector in New Mexico for seventeen years without

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objection, the court adopted the minority viewpoint and held that New Mexico's State Personnel Act was sufficiently broad to include the authority of the State Personnel Board to promulgate regulations allowing collective bargaining by state agencies. 769 P.2d at 82.

The New Mexico opinion cited the Robison case in Idaho as one of the majority cases not allowing collective bargaining without express legislative authority. 769 P.2d at 80. However, Robison does not actually hold that a municipality is prohibited from collective bargaining. Rather, it holds that Idaho's labor laws do not demonstrate "a legislative intent to inaugurate a mandatory system of collective bargaining in governmental employment." 91 Idaho at 448.

As in New Mexico, several Idaho municipalities have for a number of years chosen at their own discretion to bargain collectively with public employees other than fire fighters and school district employees. It is our opinion that a city's general power to contract under Idaho Code § 50-301 and a city council's power to budget and approve appropriations to pay the expenses of a city's various departments or agencies under Idaho Code §§ 50-1002 and 50-1003 are sufficiently broad to provide a city with the implied power to bargain collectively with its employees if it so chooses.

As Dole points out in his law review commentary, the gist of collective bargaining is negotiation of the terms and conditions of employment by management and employee representatives. 54 Iowa L. Rev. at 541. If a city chooses to engage in collective bargaining with its employees, it does not have to agree to any unacceptable contract terms, and it can make any bargaining contract terminable at will. Id. at 549. Furthermore, a city can limit the subjects open to negotiation by collective bargaining and provide safeguards to protect the interests of employees who do not favor exclusive recognition by a collective bargaining representative. Id. at 556. For instance, if a city chose to fix by ordinance the amount of compensation for a particular position of employment, that fixed compensation could not be modified through a collective bargaining agreement. Nampa Highway District No. 1 v. Graves, 77 Idaho 381, 387, 293 P.2d 269 (1956).

For the reasons stated above, it is the conclusion of this office that under Idaho law a city has the implied authority

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through its express legislative, contractual and budgetary powers to engage in collective bargaining with city employees if it so chooses and in the manner it so chooses, so long as the terms agreed to through collective bargaining do not conflict with the city's own ordinances or with state law.

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