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ATTORNEY GENERAL OPINION NO. 90-5

TO: Blynn B. Wilcox, Chairman  
Idaho Peace Officers Standards  
and Training Council  
109 South Main  
Soda Springs, ID 83276

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Is the Director of the Department of Law Enforcement the appointing authority for administrative purposes over the Idaho Peace Officers Standards and Training (POST) Academy?

CONCLUSION:

Yes, the Director of Law Enforcement is the appointing authority for the staff of the POST Academy, since the POST Council is created within the department and has no specific authority to hire and fire employees. Therefore, the director is the appointing authority by operation of Idaho Code § 67-2405.

ANALYSIS:

Your inquiry raises the question whether the POST Council or the Director of the Department of Law Enforcement is the appointing authority for the Executive Director of the POST Academy. The answer to your question requires an understanding of where the POST Council is situated within the overall structure of state government.

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State government was reorganized effective January 1, 1975, by a 1972 amendment to the Idaho Constitution:

Art. 4, Section 20. Departments limited. - All executive and administrative officers, agencies, and instrumentalities of the executive department of the state and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than January 1, 1975. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections or units in such a manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary agencies may be established by law and need not be allocated within a department; however, such temporary agencies may not exist for longer than two (2) years.

The implementing legislation listed 19 agencies, including the Department of Law Enforcement:

67-2402. Structure of the executive branch of Idaho state government. - (1) Pursuant to section 20, article IV, Idaho constitution, all executive and administrative offices, agencies, and instrumentalities of the executive department of state, except for those assigned to the elected constitutional officers, are allocated among and within the following departments:

. . .

Department of law enforcement . . . .

Key to this question is § 67-2405, which prescribes the authority of agency directors:

67-2705. Powers and duties of department heads. - *Unless specifically provided otherwise, each department head shall:*

*(1) Supervise, direct, account for, organize, plan, administer and execute the functions vested within the department as provided by law.*

(8) Subject to law, and the provisions of the state's merit system, establish and make appointments to necessary subordinate positions, and abolish unnecessary positions.

(9) Each department head may, subject to law, and the state merit system where applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

(10) Delegate any of the functions vested within the department head to subordinate employees, except the power to remove employees or fix their compensation.

(Emphasis added.) Thus, the 19 department heads are empowered to establish and make appointments to positions within their respective departments unless that power is specifically given by law to another appointing authority.

This same concept is reinforced by the Personnel System law which defines "appointing authority" as "the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to make appointments or to employ personnel in any department." (Emphasis added.) Idaho Code § 67-5302(2).

Therefore, it is necessary to consider the statutory provisions that created the Peace Officers Standards and Training Council to determine whether authority to hire and fire staff is included in that entity's enabling statute.

The Department of Law Enforcement was created in 1919, and its structure is described in chapter 29, title 67, Idaho Code. Specifically, § 67-2901 empowers the director to "exercise all of the powers and duties necessary to carry out the proper administration of the department, and may delegate duties to employees and officers of the department." There is, however, quite a variety in the statutory powers of the director in relation to the various entities created within the department.

For example, the Teletype Communications Board is appointed by the governor, and is composed of county sheriffs, chiefs of police and state police. Though the board exists within the Idaho Department of Law Enforcement and the director of DLE is the executive officer of the board, the board has exclusive

management control over ILETS, the state's law enforcement communications system. Idaho Code § 19-5203. Similarly, the State Brand Board exists within the Department of Law Enforcement, with board members appointed by the governor. Idaho Code § 25-1102. The board, rather than the director of the department, appoints the state brand inspector, who in turn hires staff. Idaho Code §§ 25-1103, 25-1104.

The specific powers of the POST Council are more narrowly drawn:

Powers of the council - Standards of training, education and employment of peace officers - Certification - Penalties. - (a) *It shall be the duty of and the council shall have the power:*

- (1) *To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed.*
- (2) *To establish the requirements of minimum education and training standards for employment as a peace officer in probationary, temporary, part-time, and/or emergency positions.*
- (3) *To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.*
- (4) *To approve, deny approval or revoke the approval of any institution or school established by the state or any political subdivision or any other party for the training of peace officers.*
- (5) *To establish the minimum requirements of courses of study, attendance, equipment, facilities of all approved schools, and the scholastic requirement, experience and training of instructors at all approved schools.*
- (6) *To establish such other requirements for employment, retention and promotion of peace officers, including minimum age, physical and mental standards, citizenship, moral character, experience and such other matters as relate to the competence and reliability of peace officers.*

(7) *To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state.*

(8) *To receive and file for record copies of merit regulations or local ordinances passed by any political subdivision.*

(9) *To maintain permanent files and transcripts for all peace officers certified by the council to include any additional courses or advance courses of instruction successfully completed by such peace officers while employed in this state.*

(10) *To receive applications for financial assistance from the state and from political subdivisions and disburse available state funds to the state and to political subdivisions for salaries and allowable living expenses or any part thereof, as authorized by the council, incurred while in attendance at approved training programs and schools. The annual reimbursements authorized by this section shall not exceed the funds available for such purpose and authorized by section 23-404, Idaho Code.*

Idaho Code § 19-5109.

Thus, the POST council has no statutory authority to hire and fire employees. In addition, the statutory history of the POST Council reveals that the council has never been the appointing authority for the academy, though its predecessor organization was.

The council's predecessor was the Law Enforcement Planning Commission (LEPC), which was established in 1969 to take advantage of federal grants relating to law enforcement. The commission was authorized to "establish, and the chairman appoint, such subcommittees or advisory councils as it deems fit, including a peace officer standards and training subcommittee, and provide funds for the meetings of such subcommittees or councils." (Emphasis added.) 1969 Idaho Session Laws, ch. 415, § 11, p.1154. The LEPC itself had the authority to hire staff:

Section 13. Subject to the approval of the governor, the commission shall appoint and fix the salary of a full-time director. Other subordinate staff necessary

to accomplish the commission's mission shall be covered by the provisions of chapter 53, title 67, Idaho Code [the merit system].

*Id.* at § 13, p.1154.

The statute was amended in 1973 to require certification by the POST Academy within one year after a peace officer becomes employed. Sections 11 and 13 of the original act were unchanged, leaving the LEPC to set the standards for peace officer training and to hire staff. 1973 Idaho Session Laws, ch. 172, § 1, p.362.

The 1974 reorganization of state government placed the LEPC in the Governor's Office, Division of Budget, Policy Planning and Coordination as a department. The LEPC was given explicit authority to hire a chief, rather than a director. 1974 Session Laws, ch. 89, § 18, p.606.

The next amendment significant to this issue occurred in 1980, when the Law Enforcement Planning Commission was moved to the office of the Director of the Department of Law Enforcement. 1980 Idaho Session Laws, ch. 144, § 1, p.309. LEPC still set the training standards and had the authority to hire staff.

The final amendment of this section left the law as it is today - the previous statute was repealed and replaced by almost identical language. 1981 Session Laws, ch. 307, p.628. The effect of the new section was that LEPC passed out of existence and was replaced by the POST Council as the standard-setting agency. Of critical importance here, the statutory authority to hire a director and staff was also eliminated.

Thus, throughout its early history, the POST council was a standard-setting body separate from the hiring authority, the LEPC, which was absorbed by the Department of Law Enforcement.

The opinion request refers to some conflict between Idaho Code and POST Council rules on this subject. The Administrative Procedure Act (APA) defines a rule as "[a]ny agency statement of general applicability that implements or prescribes law or interprets a statute as the statement applies to the public." Idaho Code § 67-5201(7). (Emphasis added.) The concept does not include statements concerning only the internal management of an agency. *Id.*

Section 19-5107 authorizes the council to promulgate rules under the APA "as necessary to carry out the provisions of this chapter." Since there is no statutory authority for the POST

Council to hire and fire in the listed "Powers of the council," § 19-5109, any rule relating to that topic would not have the force of law. A policy relating to the internal operation of the council would not be a rule that has the force of law, and would not prevail over the specific authority of agency directors in chapter 24, title 67.

Section 19-5116(a)(2) provides that "[a]ll moneys deposited to the [peace officers standards and training] account shall be expended by the peace officers standards and training counsel [sic] for the following purposes: . . . (2) Salaries, costs and expenses relating to such training. . . ." This language is tempered by the explicit powers of the POST Council. The only reference to salary in § 19-5109, governing powers of the council, is the payment of "salaries and allowable living expenses . . . incurred while in attendance at approved training programs and schools." Thus, this language relates only to the students in approved programs.

The authority "[t]o approve . . . any institution or school established by the state or any political subdivision or any other party for the training of peace officers," taken with the authority to expend money on training, indicates that if a state university, for example, provided academy-like courses for police officers, then the instructor's salary and costs could be paid from the POST account. Mere authority to approve of the existence and continuation of the academy, however, does not include hiring and firing authority.

SUMMARY:

When an entity is created within a department, the director of the department is the hiring and firing authority unless provided otherwise by statute. The POST Council has not had such statutory authority at any time during its 20-year existence, and cannot validly create a rule providing the authority to hire and discharge in the absence of statutory authority. Whether the Director of the Department of Law Enforcement has in fact delegated hiring and supervisory authority to the POST Council is not presented in your question or addressed in this opinion.

AUTHORITIES CONSIDERED:

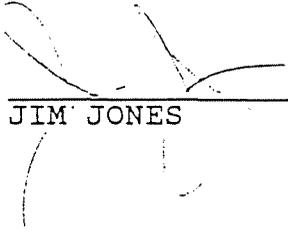
1. *Idaho Constitution*  
Art. 4, § 20.

2. Idaho Code

Idaho Code § 19-5107.  
Idaho Code § 19-5109.  
Idaho Code § 19-5116(a)(2).  
Idaho Code § 19-5203.  
Idaho Code § 23-404.  
Idaho Code § 25-1102.  
Idaho Code § 25-1103.  
Idaho Code § 25-1104.  
Idaho Code § 67-2402.  
Idaho Code § 67-2405.  
Idaho Code § 67-2705.  
Idaho Code § 67-2901.  
Idaho Code § 67-5201(7).  
Idaho Code § 67-5302(2).  
1969 Idaho Session Laws, ch. 415, § 11, p.1154.  
1973 Idaho Session Laws, ch. 172, § 1, p.362.  
1974 Idaho Session Laws, ch. 89, § 1, p.1185.  
1974 Idaho Session Laws, ch. 89, § 18, p.606.  
1980 Idaho Session Laws, ch. 144, § 1, p.309.  
1981 Idaho Session Laws, ch. 307, p.628.

Dated this 28th day of June, 1990.

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Analysis By:

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