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March 28, 1990

The Honorable Myron Jones  
House of Representatives  
State of Idaho

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

Re: Statutory Qualifications for State Superintendent of Public  
Instruction

Dear Representative Jones:

You have asked whether the state of Idaho can require that a candidate for the office of state superintendent of public instruction be certified as an administrator.

Originally, the Idaho Constitution, art. 4, § 3, which also defined the qualifications for governor, lieutenant governor, secretary of state, state auditor, and state treasurer, specified that no person would be eligible for the office of superintendent of public instruction unless that person had attained the age of 25 years at the time of the election. This constitutional provision was amended in 1948 to "eliminate the superintendent of public instruction as an officer whose qualifications are prescribed by the constitution of the state of Idaho." S.L. 1947, p. 908, S.J.R. No. 6, ratified at the general election in 1948. There is, therefore, no longer any reference to qualifications for this office in the Idaho Constitution.

The qualifications of candidacy for this office are now set forth in Idaho Code § 34-613, which provides in pertinent part:

(2) No person shall be elected to the office of superintendent of public instruction unless he shall have attained the age of twenty-five (25) years at the

time of his election; is a citizen of the United States; holds a valid Idaho administrator's certificate; is a graduate of an approved college or university as determined by the state board of education; is actively engaged in educational work in the state public schools or in the state educational institutions and shall have resided within the state two (2) years next preceding his election.

I.C. § 67-1501 similarly provides:

No person shall be a candidate for the office of state superintendent who does not hold a valid Idaho administrator's certificate, and who is not at the time of nomination a graduate of an approved college, or university as determined by the state board of education, and is also actively engaged in educational work in the state public schools or in the state educational institutions. (Emphasis added.)

Both of these sections formerly required a valid life or state life teaching certificate in lieu of the current requirement for an administrator's certificate. They were amended in 1974 to strike the reference to the life teaching certificate and replace it with the Idaho administrator's certificate because "[l]ife or state life teaching certificates have not been issued since 1948." R.S.1468, statement of purpose (1974).

The courts have generally held that where the constitution sets forth qualifications for a specific constitutional office, the state legislature does not have the power to change or add to those qualifications. See Thomas v. State ex rel. Cobb, 50 So.2d 173 (Fla. 1952), 34 A.L.R.2d 140. In Idaho, however, the constitutional qualifications for the office of public superintendent of public instruction were deleted in 1948. The Idaho Constitution, therefore, does not bar the Idaho Legislature from enacting the statutory candidate eligibility requirements for the office of superintendent of public instruction.

The federal courts have explored the constitutionality of candidate eligibility requirements that place a burden on the voting and associational rights of candidate supporters (See Anderson v. Celebrezze, 460 U.S. 780 (1983), and on the candidate's right of access to the election ballot, See Bullock v. Carter, 405 U.S. 134 (1972)). Most of the cases involve restrictions such as exorbitant filing fees or political party limitations which have the effect of excluding certain classes of people or people with certain political views. Generally, in those cases, legislative schemes that act to restrict voting rights or ballot access are subject to strict scrutiny under the

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equal protection clause of the United States Constitution. States do, however, have the power to prescribe reasonable qualifications for public office. See Storer v. Brown, 415 U.S. 724 (1974); American Party of Texas v. White, 415 U.S. 767 (1974); Bullock v. Carter, supra; Boughton v. Price, 70 Idaho 243, 215 P.2d 286 (1950). In Anderson v. Celebrezze, supra, the United States Supreme Court stated:

Although these rights of voters are fundamental, not all restrictions imposed by the States on candidates' eligibility for the ballot impose constitutionally suspect burdens on voters' rights to associate or to choose among candidates. . . . Each provision of these schemes, whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects--at least to some degree--the individual's right to vote and his right to associate with others for political ends. Nevertheless, the State's important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

Id. at 788-89 (emphasis added).

Restrictions upon candidacy for state office, such as that the attorney general be a lawyer and that the superintendent of public instruction possess specific teaching credentials, further legitimate state interests in assuring that the individual holding such office is capable of fulfilling the duties of that office. Unless they are arbitrary or discriminatory, it is unlikely that they may be successfully challenged as unconstitutionally restrictive of voter or candidate access to the ballot. Therefore, it is the conclusion of this office that the statutory requirement that the Idaho State Superintendent of Public Instruction possess an Idaho administrator's certificate is valid.

Sincerely,

Dan Chadwick  
Deputy Attorney General  
Chief, Intergovernmental  
Affairs Division