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

Re: Workers' Compensation

Dear Ms. Miller:

You have asked for an opinion regarding the Department's liability for workers' compensation benefits to correctional officers and staff using the fitness equipment at the Idaho Maximum Security Institution (IMSI).

ISSUE:

Are Department of Corrections staff members who lift weights or otherwise engage in physical exercise at the IMSI weight and fitness room covered by workers' compensation for accidental injuries received there while on shift or off shift?

CONCLUSION:

It is most likely, given the facts of use set out below, that Department staff members are covered by workers' compensation insurance for accidental injuries received while exercising at the IMSI weight and fitness room. A written waiver

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of liability, signed by the employees using the room, will most likely be invalid.

FACTS:

The IMSI weight and fitness room is a fully equipped Olympic free-weight room located in the Administration Building of IMSI. It is open daily to all departmental staff during posted hours from 5:00 a.m. to midnight. The room is under the supervision of the IMSI training officer, Steve Crossman, who tours the area at least twice daily Monday through Friday.

The room was designed for the convenience of Department personnel. When the institution was designed and built, there was a concern that Department personnel should have easier access to conditioning and exercise equipment at the institution. Having this room would save the fifteen (15) mile one-way trip into Boise. It is fair to say that the Department installed the weight room for the convenience of the staff.

The Department does not charge to use the room or the weights or to view the videotapes. No additional supervision, other than Crossman's twice daily visits, is supplied.

Use of the room and its equipment is encouraged by the Warden's office and by the training officer. Staff members may train in the room during off hours as well as during their lunch break. However, correctional officers, who are required to remain in cell blocks during their lunch period, may only use the facility during their off hours. The Correctional Emergency Response Team (CERT) performs drills and training in the room. Members of CERT are paid for their training time. However, participation in CERT is voluntary.

While there is no regular exercise program or class for staff at IMSI, use of the facility is encouraged. In a letter sent to all departmental staff, Warden A.J. Arave stated that a healthy staff uses less sick time; exercise may reduce stress; reduction of stress makes the environment in a correctional institution safer; if people are fit they are able to handle stressful physical confrontations. The only other requirements for using the room are to review a videotape, made by Bill Braseth, a training officer at the training academy, on techniques and rules to follow when weight lifting; sign and date the liability waiver; and keep the number of people in the room to a maximum of ten (10) at one time. Arave's letter also stated that if the room was abused by persons, the doors would be closed off.

There are also a number of booklets available in the room regarding such subjects as nutrition and how to calculate your maximum optimal heart rate.

While neither classes nor instructors are present in the room, Bill Braseth has offered to assist with weight training and perform physical assessments (including resting heart rate, level of conditioning and body fat content). To date, there have been no reported injuries due to use of the facility.

ANALYSIS:

The facts posed here fall into the general workers' compensation categories of recreation and social functions. The general rules for determining whether injuries incurred in recreation and social functions arise out of and in the course of employment are:

- (1) Did they occur on the premises during a lunch or recreation period as a regular incident of the employment; or
- (2) Did the employer, by expressly or impliedly requiring participation or by making the activity part of the services of that employee, bring the activity within the orbit of the employment; or
- (3) Did the employer derive substantial direct benefit from the activity beyond the intangible value of improvement of employee health and morale that is common to all kinds of recreation and social life.

C.f., Grant v. Brownfield's Orthopedic and Prosthetic, 105 Idaho 542, 651 P.2d 455 (1983); Briar Cliff College v. Campolo, 360 N.W.2d 91 (Iowa 1984) (both cases referring to Larson, 1A Workmens' Compensation Law, § 22.00).

Idaho has no statutory authority on this area other than the general compensability statute, Idaho Code § 72-102.

The Idaho Supreme Court has not ruled on a case with the same facts as those posed here. However, in a somewhat similar case, the court upheld a denial of benefits. In Teffer v. Twin Falls School Dist. No. 411, 102 Idaho 439, 631 P.2d 610 (1981), rehearing denied, the claimant, a custodian at Twin Falls High School, had completed his work before his shift ended. He and other custodians began playing basketball in the school gymnasium. Claimant later injured his knee. At the time he was hired, his supervisor told him that he could use the gym or the weight room "after work." The supervisor meant after hours. The court affirmed the Industrial Commission's decision, on the

ground that the accident did not arise out of and in the course of employment. The Teffer case is obviously distinguishable in that use of the recreational facilities there was tolerated, not encouraged, by the employer and did not form an integral part of conditioning expected of staff members to perform the job properly. Justice Bistline wrote an extensive and forcefully worded dissent in Teffer arguing that the Industrial Commission abused its discretion in not finding for the claimant. He also stated that the trend of the law was to award compensation in these cases.

More recently, in Grant v. Brownfield's Orthopedic and Prosthetic, supra, Justice Bistline wrote the majority opinion finding that an employee who chokes to death at an employer's annual, employer-sponsored Christmas party suffered an accident arising out of and in the course of employment. Justice Bistline came to this conclusion based on the fact that the party had been an annual event for twenty-seven (27) years; the employer paid all costs of the party; the purpose was to promote good will and morale amongst its employees and to foster good employee relations; attendance, though not mandatory, was encouraged by the employer; the party was held after working hours at the Crane Creek Country Club. In our opinion, the factors enumerated in Grant dictate the conclusion that accidents resulting from use of recreational and social opportunities, such as those provided by the weight room at IMSI, will be held to be compensable in Idaho.

In a similar case, a New York correctional officer was injured playing softball at the prison in which he worked. The incident happened during his off-duty hours. The New York Court of Appeals (the state's highest court) held the injury was compensable because the facility was at the work site, and the employer encouraged the games and received a benefit from them. Nazario v. New York State Department of Correction, 86 A.D.2d 914, 448 N.Y.S.2d 531 (App.Div. 1982).

In short, the Idaho Supreme Court, like other courts, has shown an increased willingness to find compensation in these kinds of cases especially where the injuries are severe, the essential nexus between the activity and the employer is strong, the activity is at the place of work and the employer supplies the facility and encourages participation.

In our opinion, the waiver that is signed by Department employees in order to use the facilities at IMSI would not absolve the Department of liability in this case. This is because the facilities are on the Department premises, they were designed and built for employee convenience, Department money has been used to equip the room, Warden Arave has encouraged staff participation, training time is given and a staff training officer will assist persons upon request in figuring out their

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level of fitness and helping them use the equipment. Under these facts, I believe it is most likely that compensation would be awarded to a person injured while using the equipment.

Very truly yours,

ROBERT R. GATES
Deputy Attorney General