



STATE OF IDAHO

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September 7, 1990

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

Re: Commercial Endorsements by Public Officers

Dear Mr. Storer:

The mayor of Idaho Falls has been invited to participate in a "charity cruise" scheduled by Royal Cruise Lines. The mayor and his wife would act as host and hostess of the cruise and would be listed as such in regional advertisements. In return for this endorsement the cruise and all transportation would be provided to the mayor and his wife without charge. It is your understanding that similar cruises are being offered to other mayors and elected officials throughout the state of Idaho.

Your letter of August 13, 1990, requested an opinion from this office regarding the propriety of such commercial endorsements in light of the recently amended Bribery and Corrupt Influences Act. Idaho Code § 18-1351 et seq. For the reasons set forth below, this office concludes that activities involving commercial endorsements by public officials for which they receive compensation is prohibited by the Act.

Prior to the recent amendments made to title 18, chapter 13A, Idaho Code, the above-described activity would not have been a violation of any Idaho statute. It was in response to "loopholes and gaps that exist under current statutes" that the legislature amended the Bribery and Corrupt Influences Act in 1990. Statement of Purpose, House Bill 881, chapter 328, Laws of

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Dale W. Storer  
Page 2  
September 7, 1990

1990. To this end, the legislature enacted Idaho Code § 18-1359 which prohibits a public official from using his position for personal gain.

Relevant to this present question is Idaho Code § 18-1359(1)(a) which states:

- (1) No public servant shall:
  - (a) Without the specific authorization of the governmental entity for which he serves, use his official position or public funds or property to obtain a pecuniary benefit from sources other than lawful compensation as a public servant.

This section would apply to commercial endorsements made by public officials for which they receive compensation in the nature of a pecuniary benefit.

The question then focuses on whether the type of benefit being provided to the mayor and his wife is "pecuniary" in nature and within the scope of Idaho Code § 18-1359(1)(a). "Pecuniary benefit" is defined as follows by Idaho Code § 18-1351(7), as amended:

- (7) "Pecuniary benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

It is the opinion of this office that the legislature's definition of "pecuniary benefit" was intended to prohibit compensation of any sort that provided economic gain, regardless of the form such compensation might take. This would include goods and services provided by a private corporation on behalf of the mayor or his wife. Furthermore, the mayor and his wife would be receiving compensation which has a definite cash equivalent. Thus, the mayor would clearly be receiving a pecuniary benefit as compensation for the cruise endorsement.

Your letter further inquired whether Idaho Code § 18-1359 would be violated if the mayor did not use his official title in the endorsement. In answering this question the focus must be directed to the "use of his official position" in gaining the endorsement, not necessarily the use of an official title. For instance, Clint Eastwood could conceivably host a cruise based upon his identity as an actor and not have his position as mayor of Carmel, California, be a factor in the endorsement. However, it is doubtful that the mayor of an Idaho city can garnish such an endorsement without reliance upon his official position. There should be a clear understanding that an attempt to sanitize an endorsement will not defeat the prohibitions set forth in §

Dale W. Storer  
Page 3  
September 7, 1990

18-1359 absent clear circumstances justifying the endorsement without reliance upon the official's public position.

Finally, the applicability of the Ethics in Government Act, Idaho Code § 59-701 et seq., as enacted by the 1990 legislature, was raised in your letter. The Ethics in Government Act of 1990 is not applicable in this instance. This act is directed primarily towards improper activities of public officials in the course of their official duties. Although the mayor would be benefitting from the cruise due to his official position, the act of hosting a cruise would not involve any activity directly relating to municipal business or government. Essentially, the mayor would be "cashing-in" on his title but would probably not be creating a "conflict of interest" in his official capacity regarding city business. Therefore, the acceptance of a complimentary cruise by a public officer would be beyond the scope of Idaho Code § 59-701 et seq.

Yours very truly,



FRANCIS P. WALKER  
Deputy Attorney General