

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

November 14, 1990

The Honorable Michael Crapo
President Pro Tem
P.O. Box 50130
Idaho Falls, ID 83405

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

Re: Public Official Ethics

Dear Senator Crapo:

In light of the legislature's enactment of the Ethics in Government Act of 1990, Idaho Code § 59-701 et seq., you have requested an opinion from this office whether the act would prohibit attorneys who serve in the legislature from representing clients before a state agency or from representing a state agency in their professional activity. It is the opinion of this office that such professional activity would not be prohibited by the new act.

The purpose of the legislation is to protect the integrity of state and local government through the mandatory disclosure of any conflict of interest a public officer may have in his official activities with his private pecuniary interests. A conflict of interest for the purposes of chapter 7, title 59, Idaho Code is defined in Idaho Code § 59-703(4):

“Conflict of interest” means any *official action or any decision or recommendation by a person acting in a capacity as a public official*, the effect of which would be to the private pecuniary benefit of the person or a member of the person's household, or a business with which the person or a member of the person's household is associated. . . . (Emphasis added.)

When an attorney who serves in the legislature represents a client before a state agency or represents a state agency as a client, the representation is based upon the lawyer's ability to engage in the practice of law. Conversely, the attorney/legislator does not engage in any official legislative activity in the professional representation of his client. Since the attorney/legislator is not acting in an official capacity, Idaho Code § 59-701 et seq. is not applicable.

Yours very truly,

Francis P. Walker
Deputy Attorney General