



STATE OF IDAHO

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December 14, 1990

Susan Lynn Mimura
Deputy City Attorney
City of Boise
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Boise, ID 83701-0500

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

Re: Conflicts of Officer Discretion/Supervisory Duty

Dear Ms. Mimura:

The Attorney General has asked me to respond to your letter of November 29, 1990. You have asked for guidance on three questions:

- (1) May a supervisory peace officer cancel a Uniform Citation issued by a subordinate?
- (2) May a supervisory peace officer release a person arrested by a subordinate?
- (3) May the police immediately release a person who has been arrested illegally, in a case of mistaken identity?

A Uniform Citation, even filled out and signed by a police officer and a prospective defendant, is, in and of itself, of no legal significance. Rather, it is a form designed to be used as a criminal complaint. M.C.R. 2(b), I.I.R. 3(a).

A complaint, by definition, is not effective until it is made to a magistrate. Idaho Code § 19-501.

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It follows logically that if a citation is found to be erroneous, either as to form or content, it should not be delivered to a magistrate. As a matter of policy, the citizen who had received the citation should be notified. This procedure achieves the dual desirable result of keeping the judicial system from being clogged with unprosecutable complaints while ensuring that the erroneously cited citizen will not have to attempt to defend against an improper charge. It is, however, recommended that the city develop precise guidelines and procedures for the handling of erroneous citations in order to avoid even the appearance of "ticket fixing."

This procedure, of course, will not deter an officer or city attorney from filing a proper complaint against someone erroneously cited.

When a peace officer makes a valid arrest subject to an arrest warrant, his supervisor may not release the person on his own volition. Indeed, the warrant itself is written in mandatory language. The arrestee must be taken before a magistrate, Idaho Code § 19-507, subject to the time limits set forth in I.C.R. 5(b). No one has the authority to countermand the magistrate's order, except a magistrate or district judge.

When a peace officer makes a valid warrantless arrest, he must also bring the defendant before a magistrate "without unnecessary delay." Idaho Code § 19-615. Again, the terms of the statute are in mandatory language. A supervisor may not thwart the statute by ordering the person released. However, a prosecutor or city attorney may authorize the release of an arrestee prior to the filing of a complaint and appearance before a magistrate by exercising his or her prosecutorial discretion. Idaho Code §§ 31-2604, 50-208A. A peace officer has no such discretion.

Finally, if it is determined by a peace officer that the person he has arrested is in fact not the person named in the warrant, the person should be released immediately. The criminal statutes and rules presuppose that the person being held has been correctly identified. The warrant cannot be considered as having been validly served if it is served on the wrong person. If a person has been misidentified, the law pertaining to holding the person has no application. Again, it is recommended that the

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city develop procedures regarding this issue in order to minimize liability.

Yours very truly,

A handwritten signature in cursive script that reads "Michael Kane".

MICHAEL KANE
Deputy Attorney General
Chief, Criminal Law Division

MK/mkf