

November 20, 1992

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

Dear Mr. Mason:

In your letter dated October 27, 1992, you requested an opinion regarding the appropriate election date for trustee elections for your community college district.

Idaho Code § 33-2106, enacted in 1963 and entitled "Trustees of junior college districts," states in part:

Elections of trustees of junior college districts shall be biennially in even-numbered years, and shall be held on such uniform month as the board of trustees shall determine.

....

Notice of the election, the conduct thereof, the qualification of electors and the canvass of returns shall be as prescribed for the election of school district trustees, and the board of trustees shall have and perform the duties therein prescribed for the board of trustees of school districts.

....

When elections held pursuant to this section coincide with other elections held by the state of Idaho or any subdivision thereof, or any municipality or school district, the board of trustees may make agreement with the body holding such election for joint boards of election and the payment of fees and expenses of such boards of election on such proportionate basis as may be agreed upon.

(Emphasis added.) Therefore, the statute distinguishes between election dates and election procedures, the former being at the discretion of the community college board and the latter in accordance with school election laws.

The 1992 legislature added a new statute, Idaho Code § 34-106, which sets uniform election dates with certain exceptions. The law is effective January 1, 1994. The statute states in pertinent part:

On and after January 1, 1994, notwithstanding any other provision of the law to the contrary, there shall be no more than four (4) elections conducted in any county in any calendar year, except as provided in this section. . . .

. . . .

(4) The governing board of each political subdivision subject to the provisions of this section, which, prior to January 1, 1994, conducted an election for members of that governing board on a date other than a date permitted in subsection (1) of this section, shall establish as the election date for that political subdivision the date authorized in subsection (1) of this section which falls nearest the date on which elections were previously conducted, unless another date is established by law.

. . . .

(6) School districts governed by title 33, Idaho Code, and water districts governed by chapter 6, title 42, Idaho Code, are exempt from the provisions of this section.

(Emphasis added.) *See also* Idaho Code § 34-1401 (contains a similar exemption from the Uniform District Election Law for school districts and water districts).

The question then becomes whether the school district exemption set forth in the Idaho Code sections cited above also applies to community college elections or whether the "notwithstanding any other provision of the law to the contrary" language precludes application of the exemption.

It appears significant that the reference in Idaho Code § 33-2106 is to "notice of election, the conduct thereof, the qualification of electors and the canvass of returns as prescribed for the election of school district trustees." (Emphasis added.) The references are to procedural aspects of the conduct of elections and qualifications of electors. It is in these matters that trustee elections for community college districts are to track the procedures for the election of school district trustees. There is no mention of election dates. Indeed, Idaho Code § 33-2106 itself does not appear to require that a community college district election be on the date prescribed for school district elections.

Further, since the new statute on uniform dates contains the language "notwithstanding any other provision of the law to the contrary" (emphasis added), it appears that the intent of the legislature was to override the community college trustees' authority to determine an election date different from the prescribed uniform dates. Legislative minutes concerning the new statute (H.B. 743) indicate that the sponsors intended the exemptions to be viewed narrowly.

We therefore conclude that after January 1, 1994, your trustee elections should be held on the uniform date prescribed in Idaho Code § 34-106 "which falls nearest the date on which elections were previously conducted." Idaho Code § 34-106(4).

However, since the statute does not become effective until January 1, 1994, if there is some compelling reason for holding community college trustee elections on a date other than one of the prescribed uniform dates, you may wish to seek a specific exemption during the 1993 legislative session.

We have conferred with the Secretary of State's office regarding your question and have determined that there are currently no rules, regulations, or interpretations of that office which would answer your specific question. *See* Idaho Code § 34-106(5).

Sincerely,

BRADLEY H. HALL
Deputy Attorney General
and Chief Legal Officer