

February 10, 1993

Mr. Gary Stivers
Executive Director
Industrial Commission
STATEHOUSE MAIL
Boise, ID 83701

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

Re: Merger of Idaho Division of Vocational Rehabilitation with the Industrial
Commission

Dear Mr. Stivers:

I am writing in response to your letter dated January 26, 1993, whereby you asked this office to review the viability of the Governor's proposed merger of the Idaho Division of Vocational Rehabilitation with the Industrial Commission. Specifically, you inquired whether the Industrial Commission would satisfy the definition of "sole State agency" pursuant to federal regulation. Satisfying the federal regulation requirements is necessary in order to participate in federal funding of the program.

The congressional authorization for the vocational rehabilitation program is set forth in the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, *et seq.*, and is augmented by regulations promulgated and set forth at 34 CFR § 361.1, *et seq.* Program guidance is further set forth in RSA Program Instruction 75-31 and RSA Program Instruction 77-26.

In order to participate in a vocational rehabilitation program funded in part through federal funds, a state is required to propose a plan pursuant to 29 U.S.C. § 721. Within the plan, the state is required to designate a "sole State agency" to administer the plan. 29 U.S.C. § 721(a)(1)(A); 34 CFR § 361.5(a). In order to be designated as a "sole State agency," the state agency must meet the following criteria delineated in 34 CFR § 361.5(b):

(1) A State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of individuals with handicaps. This agency must be an independent State commission, board, or other agency, which has as its major function vocational rehabilitation or vocational or other rehabilitation of individuals with handicaps. The agency must have the authority, subject to the supervision of the Office of

Governor, when appropriate, to define the scope of the vocational rehabilitation program within the provision of State and Federal law, and to direct its administration without external administrative controls; or

(2) The State agency administering or supervising the administration of education or vocational education in the State; or

(3) A State agency which includes at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare, or labor.

Currently, the Idaho Division of Vocational Rehabilitation is located under the Idaho State Board of Education. The Idaho State Board of Education meets the requirement of "sole State agency" pursuant to 34 CFR § 361.5(b)(2) as the state agency which administers and supervises the administration of education and vocational education in this state. Clearly, the Industrial Commission would not meet the criteria set forth in 34 CFR § 361.5(b)(2) since it does not, nor will it in the future, administer or supervise the administration of education or vocational education in the state. Thus, if the state is to meet one of the sets of criteria to be a "sole State agency," it must meet the criteria set forth in either § 361.5(b)(1) or § 361.5 (b)(3).

In order to be a "sole State agency" pursuant to § 361.5(b)(1), a state agency must meet the following requirements:

1. Be primarily concerned with vocational rehabilitation or vocational or other rehabilitation of individuals with handicaps;
2. Have the authority, subject to supervision by the Governor, to define the scope of the vocational rehabilitation program within the provisions of state and federal law; and
3. Have the control necessary to direct its administration without external administrative controls.

The Industrial Commission will have difficulty in meeting the first prong of this definition. As currently organized, the Industrial Commission is statutorily charged with a number of functions, only one of which is providing rehabilitative services to assist injured workers in returning to work. The other functions of the Industrial Commission include, but are not limited to, ensuring employer compliance with workers' compensation laws, processing claims to ensure that benefit providers deliver medical and time-lost benefits to injured workers, and conducting hearings to resolve disputed workers' compensation claims. As currently organized, the rehabilitative services

provided by the Industrial Commission would not be the primary function of the Commission, but, at best, would be co-equal to the other functions previously delineated. It is unclear at this time whether reorganization of the Industrial Commission would result in rehabilitative services being the primary focus of the Commission as required by § 361.5(b)(1).

With reorganization, the Industrial Commission could meet, depending on federal application and interpretation, the criteria of "sole State agency" pursuant to CFR § 361.5(b)(3). For designation as a "sole State agency" pursuant to this section of the federal regulation, an agency must, in addition to program responsibility for vocational rehabilitation, include "at least two other major organizational units, each of which administers one or more of the State's major programs of public education, public health, public welfare or labor." 34 CFR § 361.5(b)(3). Unfortunately, the term "major program," as used in this regulation, is not defined in the regulation nor does there appear to be any written guidance from the Rehabilitative Service Administration as to what type of state program would qualify as a "major program." However, using a common sense approach, the Industrial Commission's administration of the workers' compensation laws in the State of Idaho should qualify as a major program involving the public welfare and labor. In addition, the administration of the Crime Victims Compensation Act would also appear to be a major program for the public welfare.

For purposes of reorganization to comply with § 361.5(b)(3), the Industrial Commission must comply with a number of federal regulatory requirements, the most significant of which require the following:

(b) . . . [T]he State plan must assure that the agency (or each agency, where two agencies are designated), includes a vocational rehabilitation bureau, division or other organizational unit which:

(1) Is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation of individuals with handicaps, and is responsible for the administration of the State agency's vocational rehabilitation program, which includes the determination of eligibility for; the determination of the nature and scope of; and the provision of vocational rehabilitation services under the State plan;

(2) Has a full-time director in accordance with § 361.8;
and

(3) Has a staff, all or almost all of whom are employed full time on the rehabilitation work of the organizational unit.

(c)(1) Location of designated State unit. The State plan must assure that the designated State unit, specified in paragraph (b) of this section, is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency, or in the case of an agency described in § 361.5(b)(2), the unit must be so located and have that status, or the director of the unit must be the executive officer of the State agency.

34 CFR §§ 361.6(b) and 361.6(c)(1). *See also* 34 CFR §§ 361.5(c), 361.6(a)(2), 361.8, 361.10, and 361.14.

In conclusion, it is our opinion that the Industrial Commission, upon reorganization, should be able to qualify as a "sole State agency" pursuant to the provisions of 34 CFR § 361.5(b)(3). It is not yet clear whether reorganization of the Commission will result in the Commission's meeting the criteria for "sole State agency" set forth in 34 CFR § 361.5(b)(1). Apparently, a primary concern of the Rehabilitation Service Administration is that a merger of the Idaho Department of Vocational Rehabilitation with the Industrial Commission could result in submerging the Vocational Rehabilitation program into the Industrial Commission to the extent that the Vocational Rehabilitation program is reduced in its scope or effectiveness. *See* RSA Program Instruction, 75-31, p. 2. This appears to be the primary reason for the restrictions for designation of "sole State agency." However, strict adherence to the federal regulatory requirements by the Industrial Commission in developing its plan of reorganization should alleviate the concerns of the Rehabilitative Services Administration.

I hope this satisfactorily addresses the issues you have raised. If I can be of further help in this or any other matter, please let me know.

Very truly yours,

TERRY B. ANDERSON
Chief, Business Regulation
and State Finance Division