

February 19, 1993

Mr. Steven Berenter
HAWLEY, TROXELL, ENNIS & HAWLEY
P. O. Box 1617
Boise, ID 83701

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

Re: Idaho Code § 33-313

Dear Mr. Berenter:

You have requested an opinion from this office regarding the construction and application of Idaho Code § 33-313. Specifically, you ask (1) whether a school board of trustees must appoint a person to serve as trustee for each trustee zone when a rezoning occurs and, if so, (2) whether the appointee serves the remainder of the term designated for each zone.

The answers are (1) yes, the trustees must appoint a trustee from the new zone or zones, and (2) the appointed trustee serves until a duly-elected trustee takes office in July following a May election.

Idaho Code § 33-313 provides the method available to school boards of trustees and patrons to propose to redefine and change trustee zones, *i.e.*, "rezone." Such a proposal can be initiated by the board of trustees or by petition presented to the board of trustees, signed by fifty (50) or more school electors residing in the district. The proposal must contain certain legal descriptions as well as the approximate population in the proposed zones. The State Board of Education reviews the proposal. If the state board approves the proposal the board of trustees must hold an election within a certain time-frame. The question presented to the school district electors is whether the proposal to change trustee zones should be approved.

According to Idaho Code § 33-313, once a rezone of trustee zones is approved by school district electors, a school district board of trustees has two responsibilities. The first is to appoint a trustee from among residents of a new zone and the second is to move forward with an election of trustees from those new zones. Idaho Code § 33-503 provides that the election of school trustees shall be on the third Tuesday in May; Idaho Code § 33-510 sets the annual meeting of each school district as the date of the trustees' regular July meeting.

In 1984, the Idaho Legislature amended §§ 33-313 and 33-504, Idaho Code, as follows:

At the next regular meeting of the board of trustees following the approval of the proposal the board shall appoint from its membership or from the patrons resident in each trustee zone, a person from that zone to serve as trustee until the next ~~regularly scheduled trustee election for that zone~~ annual meeting. At the annual election a trustee shall be elected to serve during the term specified in the election for the zone. The elected trustee shall assume office at the annual meeting of the school district next following the election.

Idaho Code § 33-313, am. 1984, ch. 94 § 1, p. 218.

Any person appointed as herein provided shall serve until the annual ~~election~~ meeting of school district trustees next following such appointment. ~~At such~~ the annual election a trustee shall be elected to complete the unexpired term of the office which was declared vacant and filled by appointment.

The elected trustee shall assume office at the annual meeting of the school district next following the election.

Idaho Code § 33-504, am. 1984, ch. 94 § 2, p. 218.

Whenever a statute is amended by the legislature, it is presumed that the legislature intended to change existing law. Nebeker v. Piper Aircraft Corp., 113 Idaho 609, 747 P.2d 18 (1987). The courts have the responsibility to give force and effect to the legislature's intent and purpose. Sherwood v. Carter, 199 Idaho 346, 805 P.2d 452 (1991). The purpose of the 1984 amendments, according to the legislative history as expressed in committee minutes, was to clarify language regarding the length of service of an appointed trustee. House Education Committee, Jan. 25, 1984, Bob Dutton.

Based upon the statutory language, the board of trustees has an obligation to appoint individuals from the rezoned trustee zones to serve until the July annual meeting. Furthermore, the clarification provided by the 1984 legislative changes definitively provides that trustees from rezoned trustee zones who are elected in May shall take office in July, replacing the appointed trustees.

I hope this response adequately addresses the questions raised in your letter. If the Attorney General's Office can be of further assistance, please feel free to contact me.

Sincerely,

ELAINE EBERHARTER-MAKI
Deputy Attorney General
State Department of Education