

ATTORNEY GENERAL OPINION NO. 93-10

To: Honorable Jerry L. Evans
State Superintendent of Public Instruction
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED

1. Does a school trustee have a direct or indirect pecuniary interest, pursuant to Idaho Code § 33-307, in the school district's contract with a health insurance company--over which trustees exercise some decision-making authority--if she is also a former school teacher receiving health insurance benefits from that company as part of the district's retirement program?
2. If a pecuniary interest exists, may the individual declare her conflict of interest and disqualify herself from discussing or voting on the contract, or is the individual precluded from serving as duly elected trustee for that same school district?

CONCLUSION

1. An individual who benefits from a contract between an insurance company and a school district has a pecuniary interest in that contract.
2. Pursuant to Idaho Code § 33-507, an individual with a pecuniary interest in a contract with the school district may not be a trustee of that school district if the individual continues to receive benefits under the contract.

ANALYSIS

I. Facts

Norinne Kunz is a retired Bear Lake School District teacher who was elected on May 18, 1993 to serve as a trustee for that school district. In the spring of 1992, Ms. Kunz took advantage of an "early retirement" incentive program. As part of Bear Lake School District's master agreement with the Bear Lake Education Association, the "early retirement" program provides that the former employee and his or her spouse receive health insurance until the former employee reaches the age of 65. Before a change to the master agreement can occur, the entire board of trustees must vote on making the changes. The board further votes on the total budget allocation for insurance, including the insurance for the school district's early retirees.

Ms. Kunz began receiving the insurance coverage benefit on September 1, 1992 and is scheduled to continue receiving this coverage until December 24, 1995. The cost to the school district for the 1993-94 school year for this benefit is \$4,831.20.

Your question is whether Ms. Kunz can serve as a trustee on the school district board while at the same time receiving benefits from an insurance contract administered by that same board. We conclude that she may not.

II. Discussion

A. The Board of Trustees Statute

The statute that deals specifically with the limitation on the authority of trustees is Idaho Code § 33-507, which states in pertinent part:

It shall be unlawful for any trustee to have pecuniary interest directly or indirectly in any contract or other transaction pertaining to the maintenance or conduct of the school district, or to accept any reward or compensation for services rendered as a trustee.

This section provides that no member of the board of trustees may personally have a monetary interest in any contract pertaining to the maintenance or conduct of the school district. This is true regardless of whether the interest is direct or indirect.

An Attorney General's Legal Guideline issued September 11, 1981, held it would violate Idaho Code § 33-507 for a school district to pay health insurance premiums for its school board of trustees members:

[A] persuasive argument can be developed for the position that members of a school board of trustees would have at least an indirect pecuniary interest in the contract between the district and an insurance company under circumstances where the district would provide for the payment of health insurance premiums for its trustees. Such a situation clearly would be in violation of the letter and intent of Idaho Code § 33-507 and provides further support for the conclusion that participating school districts should be advised to weigh carefully a decision to continue such a practice.

The facts set forth above suggest that, in light of the 1981 Attorney General's Legal Guideline, should Ms. Kunz take the position of trustee of the Bear Lake School District, she would have a pecuniary interest in a contract pertaining to the conduct or maintenance of the school district, which is prohibited pursuant to Idaho Code § 33-507.

B. The Ethics in Government Act

The other statute that is arguably applicable in this situation is Idaho's Ethics in Government Act, Idaho Code §§ 59-701 through 59-706. This act, as passed by the Idaho Legislature in 1990, deals with conflicts of interest for all persons in government positions in Idaho. Key to the act is the requirement that a public official with a real or potential conflict must disclose that conflict prior to acting on the matter. The public official may obtain an advisory opinion from private counsel, from an attorney representing the school district, or, in this case, from the attorney general. The individual may then act on that advice.

The act further defines a conflict of interest as:

[A]ny 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

Idaho Code § 59-702(4). Thus, the Ethics in Government Act, originally enacted in 1990, paralleled the provisions of Idaho Code § 33-507 and identified a "conflict of interest" as any situation in which a public official participates in a decision affecting a contract involving his or her own private pecuniary benefit.

In 1992, through Senate Bill 1440, the Idaho Legislature amended the Ethics in Government Act by adding a new section, Idaho Code § 59-704A, which states:

When a person is a public official by reason of his appointment or election to a governing board of a governmental entity for which the person receives no salary or fee as compensation for his service on said board, he shall not be prohibited from having an interest in any contract made or entered into by the board of which he is a member, if he strictly observes the procedures set out in section 18-1361A, Idaho Code.

According to the Statement of Purpose to Senate Bill 1440, the new section 59-704A was intended to "make an exception to the prohibition against contracts section of the code and the ethics in government section for unpaid elected or appointed official [*sic*]." It was further stated in the Senate State Affairs Committee that the bill was "especially for Hospital Boards who have no compensated board members but would also apply to any non compensated public servants." Thus, it could be argued the legislature meant to apply Idaho Code § 59-704A to all non-compensated elected and appointed

officials. School board trustee members fall within the category of non-compensated elected officials pursuant to Idaho Code § 33-507 and, therefore, would not be prohibited from having an interest in any contract made or entered into by the school board.

C. Reconciling the Two Statutes

The 1993 legislature did not repeal Idaho Code § 33-507. This section, governing the conduct of local school board trustees, has been in its present form since 1963. Similar language can be traced back to the Revised Statutes of Idaho Territory, title III, chapter VI, section 665 (1887), which stated:

Sixth. Said Trustees have further power when directed by a vote of their district to purchase, receive, hold, and convey real and personal property for school purposes, and to hold, purchase, hire, and repair school houses, and supply the same with necessary furniture in accordance with the provisions of this Title and to fix the location of school houses: Provided, that no Trustee shall be pecuniarily interested in any contract made by the Board of Trustees of which he is a member, and any contract made in violation of this section is null and void

Id. at 129 (emphasis added).

As a general rule, the legislature is presumed to envision the whole body of the law when it enacts new legislation. Furthermore, this presumption has been held to have special application to important public statutes of long standing. Doe v. Durtschi, 110 Idaho 466, 478, 716 P.2d 1238, 1250 (1986). The Idaho courts will only find an implied repeal when new legislation is irreconcilable with and repugnant to a preexisting statute. *Id.* The Idaho Supreme Court has further held that "[t]he legislature is presumed not to intend to overturn long established principles of law unless an intention to do so plainly appears by express declaration or the language employed admits of no other reasonable construction." George W. Watkins Family v. Messenger, 118 Idaho 537, 540, 797 P.2d 1385, 1388 (1990) (emphasis added).

Idaho Code § 33-507 is an important public statute of long standing which the legislature cannot be presumed to have intended to amend or repeal without specific mention. The Idaho Legislature did not make an express declaration that Idaho Code § 33-507 was to be repealed upon the enactment of Idaho Code § 59-704A. While Idaho Code § 33-507 is more prohibitive than the amended version of Idaho Code § 59-704A, it is not irreconcilable or repugnant.

Yet another principle of statutory construction invoked when statutes appear to be in conflict with one another holds that a specific statute controls over a more general statute when there is any conflict. Guillard v. Dept. of Employment, 100 Idaho 647, 603 P.2d 981 (1979); Swisher v. State Dept. of Environmental and Community Services, 98 Idaho 565, 569 P.2d 910 (1977).

Idaho Code § 330507 deals specifically with the limitations of authority of the local board of trustees of each school district and is more restrictive than the Ethics in Government Act. If a conflict of interest of an individual exists under Idaho Code § 33-507 but does not exist under the Ethics in Government Act, the conflict of interest is still present and is not cured by the terms of the Ethics in Government Act.

We conclude that the specific provisions of the school board trustees law, Idaho Code § 33-507, take precedence over the general conflict of interest law found in the Ethics in Government Act.

III. Conclusion

Idaho Code § 33-507 prohibits a member of the board of trustees of a school district from receiving a personal pecuniary benefit from a contractual relationship between the school district and the teachers' association. Idaho Code § 33-507 is absolute and provides no leeway or exceptions to the prohibition of pecuniary interest. There is no provision that allows a trustee to simply declare the conflict of interest and disqualify herself or himself from discussing or voting on the insurance benefits issue. A trustee member cannot have a personal interest in any contract made by the board of trustees. Thus, Idaho Code § 33-507 prohibits Ms. Kunz from becoming a trustee if she continues to receive the insurance benefits set forth in the master agreement with the teacher's association.

AUTHORITIES CONSIDERED

1. Idaho Code:

§ 33-507.
§§ 59-701 through 706.

2. Idaho Cases:

Doe v. Durtschi, 110 Idaho 466, 716 P.2d 1238 (1986).

George W. Watkins Family v. Messenger, 118 Idaho 537, 797 P.2d 1385 (1990).

Guillard v. Dept. of Employment, 100 Idaho 647, 603 P.2d 981 (1979).

Swisher v. State Dept. of Environmental and Community Services, 98 Idaho 565, 569 P.2d 910 (1977)

3. Other Authorities:

Attorney General's Legal Guideline issued September 11, 1981.

Revised Statutes of Idaho Territory, title III, chapter VI, section 665 (1887).

DATED this 22nd day of September, 1993.

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Attorney General

Analysis by:

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