

March 14, 1994

Honorable Jim Hansen  
Idaho House of Representatives  
**HAND DELIVERED**

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

Re: Constitutionality of Statutory Limitation on Qualifications to be  
Candidate for and Serve as State Superintendent of Public Instruction

Dear Representative Hansen:

Your letter of March 8, 1994, poses the following question:

During our deliberations on legislative changes to Idaho Code §§ 34-613 and 67-1501 on the qualifications to be a candidate for and serve as the State Superintendent of Public Instruction, it has come to my attention that the Idaho Constitution does not speak to the qualifications for this constitutional office.

Please, will you research this to determine if, in fact, Idaho Code §§ 34-613 and 67-1501 unconstitutionally limit the ability of Idaho citizens to be a candidate for and serve as the State Superintendent of Public Instruction.

It is my opinion that statutory qualifications to be a candidate for and serve as State Superintendent of Public Instruction are constitutional so long as they are rationally related to service in the office. I reach this conclusion for the following reasons.

As originally adopted, art. 4, § 3 of the Idaho Constitution addressed the qualifications of the office of Superintendent of Public Instruction by including the office in the list of offices whose officeholders must be 25 years old, a citizen of the United States, and a resident of Idaho for two years. 1947 Senate Joint Resolution No. 6, however, proposed a constitutional amendment to remove the State Superintendent of Public Instruction from the section dealing with qualifications of executive officers. *See* 1947 Idaho Sess. Laws 908-09. The proposed amendment was ratified by the voters in 1948. The title to the joint resolution proposing the amendment stated the following:

A joint resolution proposing amendment of the constitution of the state of Idaho, by amending section 3 of article IV of the constitution of the state of Idaho relating to the qualification of officers of the executive

department to eliminate the superintendent of public instruction as an officer whose qualifications are prescribed by the constitution of the state of Idaho, and submitting to the electors of the state of Idaho for their approval or rejection the question whether said section of article IV of the constitution of the state of Idaho shall be so amended as to eliminate the superintendent of public instruction as an officer whose qualifications are prescribed by the constitution of the state of Idaho, and directing the secretary of state to give legal notice of this proposed constitutional amendment.

The logical import of the title and text of this joint resolution removing references to the Superintendent of Public Instruction from art. 4, § 3, is to allow the legislature to prescribe qualifications for office.

There is, however, a strong line of case law in Idaho's sister western states to the effect that a legislature cannot add to a constitutional prescription of qualifications for office. *See, e.g., State ex rel. Sawyer v. LaSoto*, 580 P.2d 714, 717 (Ariz. 1978) (qualifications for office fixed in the constitution are exclusive and legislature may not add new or different ones); *State ex rel. Powers v. Welch*, 259 P.2d 112, 115 (Ore. 1953) (constitutional right given to voters to elect whomever they please that meets the constitutional age and residency requirements cannot be abridged by legislature); *In re Bartz*, 287 P.2d 119, 121 (Wash. 1955) (state constitutions that prescribe qualifications for officeholders generally and specific qualifications for certain officers have been construed to prohibit legislative imposition of any additional qualifications). *But see Rittenband v. Cory*, 205 Cal. Rptr. 576, 579 (Cal. App. 1984) (upholding mandatory retirement of district judges at age 70). Strictly speaking, this line of authority would not apply to the State Superintendent of Public Instruction because the reference to the superintendent has been removed from art. 4, § 3 of the Idaho Constitution, and therefore there are no constitutionally prescribed qualifications for office for the State Superintendent of Public Instruction.

Even if there were constitutionally prescribed qualifications for the office, the Idaho Supreme Court has construed statutes that restrict the eligibility of persons to become district judges as not being in conflict with art. 5, § 23 of the Idaho Constitution providing the qualifications of district judges. Art. 5, § 23 provides:

**Qualifications of District Judges.**--No person shall be eligible to the office of district judge unless he be learned in the law, thirty (30) years of age, and a citizen of the United States, and shall have resided in the state or territory at least two (2) years next preceding his election, or unless he shall have been at the time of his election, an elector in the judicial district for which he is elected.

In Boughton v. Price, 70 Idaho 243, 215 P.2d 286 (1950), the Idaho Supreme Court considered the constitutionality of a statute providing that no person shall be eligible for election or appointment to the office of district judge after having attained the age of 70 years. The court upheld the constitutionality of this statute with the following analysis:

Section 1-2007, I.C., prescribing that no person shall be eligible for election or appointment to the office of district judge after having attained the age of 70 years, is part of the plan and purpose of the Judges Retirement Act. This act provides for the resignation and retirement of judges upon retirement pay, and was enacted for the purpose of betterment of our judicial system. The fixing of the maximum age limit at 70 years does not appear to be unreasonable and is in harmony with the other provisions of the retirement act.

We conclude that section 1-2007, I.C., is not in conflict with article V, section 23, of the constitution and was within the power of the legislature to enact.

70 Idaho at 251, 215 P.2d at 295.

Art. 4, § 3 of the Idaho Constitution does not prescribe qualifications to the office of State Superintendent of Public Instruction. The constitutional amendment removing that office from that section stated that it was intended to repeal constitutional qualifications from the office. Moreover, the Idaho Supreme Court has held in Boughton v. Price that the legislature may supplement the constitutional qualifications to be a district judge with reasonable statutory qualifications. (As noted earlier, the latter holding is at odds with that of many of Idaho's sister western states, but not all of them.) Accordingly, it would appear that it is constitutional for the legislature to enact statutes prescribing qualifications for the office of State Superintendent of Public Instruction that are reasonably related to the office itself.

Please let me know if I can be of further assistance in this matter.

Sincerely yours,

MICHAEL S. GILMORE  
Deputy Attorney General