

September 29, 1994

Honorable Ron Koeper
Nez Perce County Sheriff
P.O. Box 896
Lewiston, ID 83501

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

Dear Sheriff Koeper:

This is in response to your letter in which you requested guidance regarding budget responsibility for the juvenile detention center. You requested an opinion on whether you or the Nez Perce County Commissioners would be responsible for the expenses of the center exceeding the allocation in your budget.

CONCLUSION

You do not have any personal responsibility for liabilities incurred beyond the amount allocated in your budget for juvenile detention. However, the allocation must remain in your budget for this year because the time to appeal has passed. As the money was intended for the juvenile detention center, it must be used for this purpose. Therefore, the county commissioners can cause the money that was allocated in your budget for juvenile care to be applied to the costs associated with the juvenile detention center.

ANALYSIS

1. The County Budget Process

The statutory provisions specifically relating to the establishment of a county budget are found in Idaho Code §§ 31-1602 through 31-1605. As the sheriff, you were required to submit an itemized estimate of revenues and expenditures to the county auditor. Idaho Code § 31-1602. Either you or the county commissioners included an estimate for the juvenile detention center in the sheriff's budget, although the county commissioners had recently assumed responsibility for the facility. The county auditor used this information to prepare a suggested budget for the next fiscal year, which was then filed with the county commissioners as required by Idaho Code § 31-1603. The commissioners then agreed upon the tentative appropriations and published notice of the anticipated revenues and proposed appropriations pursuant to Idaho Code § 31-1604. The commissioners were then required to give any taxpayer an opportunity to appear and

be heard at a hearing on the tentative budget. Idaho Code § 31-1605. Thereafter, the budget was finally adopted and filed and the appropriation for the juvenile detention center was formally approved in your budget.

2. Decisions of the County Commissioners are Appealable--If no Appeal is Filed, There is no Legal Process to Force the Commissioners to Relocate a Budget Line Item

Under Idaho Code §§ 31-1509 and 67-5273, a petition for judicial review of the budget must be filed within 28 days after the budget becomes final. Because the time to appeal the budgeting decision has passed, the allocation for the juvenile detention center must remain in your budget for this year. There is no other legal process provided by statute that would force the commissioners to relocate the juvenile detention center allocation.

It is unclear whether the commissioners can voluntarily relocate the line item for the detention center. Commissioners are allowed to adjust the budget to reflect unscheduled revenue from the state or federal government. However, there is no statutory provision addressing whether the commissioners can adjust the budget for any situation other than for emergency expenditures under Idaho Code § 31-1608.

3. If the Item is not Relocated, the Sheriff is not Liable for any Budget Overrun Caused by the Administration of the Center

The sheriff will not be personally liable for any expenditures in excess of the budget allocation for the juvenile detention center. Because the commissioners have assumed the authority and control over the facility, they also have the responsibility for any budget overruns caused by such administration.

Under Idaho Code § 31-1606:

The estimates of expenditures . . . as finally fixed and adopted as the county budget . . . shall constitute the appropriations for the county for the ensuing fiscal year. Each and every county official or employee shall be limited in making expenditures or the incurring of liabilities to the respective amounts of such appropriations.

Further, under Idaho Code § 31-1605:

Said budget as finally adopted . . . shall specify the fund or funds against which warrants shall be issued for the expenditures so authorized, respectively, and the aggregate of expenditures authorized against any fund

shall not exceed the estimated revenues to accrue to such fund during the ensuing fiscal year

These statutes clearly apply to the county commissioners as county officials. Idaho Code § 31-2001. Therefore, the commissioners cannot order the expenditure of funds in excess of the approved appropriations within your budget.

Furthermore, Idaho law places liability for any budget overruns connected with the detention center upon the commissioners and/or the auditor. Idaho Code § 31-1607 reads in part:

Expenditures made, liabilities incurred or warrants issued in excess of any budget appropriations . . . shall not be a liability of the county, but the official making or incurring such liability, expenditure, or issuing such warrant shall be liable therefor personally and upon his official bond, as is hereinafter provided. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of said budget appropriations . . . except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. Any county officer creating any liability or any county commissioner or commissioners, or county auditor approving any claim or issuing any warrant in excess of any such budget appropriation, except as above provided, shall be liable to the county for the amount of such claim or warrant

(Emphasis added.)

4. The County Commissioners can Control the Expenditures of Other County Officers After the County Budget has been Finalized

County commissioners have broad control in the context of county expenditures. Title 31, chapter 8, Idaho Code, lists the powers and duties of the board of county commissioners. Idaho Code § 31-802 gives the county commissioners the power to supervise all other county officers charged with assessing, collecting, safekeeping, management or disbursement of public money or revenues. Idaho Code § 31-809 gives the county commissioners the power to examine and audit the accounts of all county officers and to order warrants to be drawn therefor. Idaho Code § 31-810 gives the county commissioners the power to examine, settle and allow all accounts legally chargeable against the county and provide for the payment of the same. Furthermore, Idaho Code § 31-828 gives the county commissioners the power to do and perform all things necessary to carry out their other powers.

In addition, the Idaho Supreme Court has held that county commissioners can disallow expenditures that are approved in the county budget. Magoon v. Board of County Commissioners, 58 Idaho 317, 73 P.2d 80 (1937). In this case, a county sheriff bought a new automobile for the sheriff's department. Although the expenditure had been approved by the county commissioners in the county budget, the commissioners rejected the claim. The car dealer then sued the county for the amount due, arguing that the sheriff was authorized to purchase the automobile by virtue of the county budgeting process. The Idaho Supreme Court held for the county commissioners.

Clearly, county officers do not have complete independence in making expenditures on behalf of the county without commissioner approval. Under Idaho law, the county commissioners have some discretion to disallow expenditures that were approved in the county budgeting process. Whether they can then direct this money to another use within the same fund is unclear.

County commissioners do not have absolute control in disapproving expenditures. They can be forced to approve payments for items such as routine supplies and valid contract claims. *See* Shillingford v. Benewah County, 48 Idaho 447, 282 P. 864 (1929); H.J. McNeel v. Canyon County, 76 Idaho 74, 277 P.2d 554 (1954). Furthermore, the commissioners cannot assume the duties of other county officers. *See* Meller v. Board of Commissioners, 4 Idaho 44, 35 P. 714 (1894); Clark v. Ada County Board of Commissioners, 98 Idaho 749, 754, 572 P.2d 501, 506 (1977). At some point in interfering with expenditures approved in the sheriff's budget, the county commissioners would be exceeding their power. This point would have to be determined by a court upon the particular facts of the case.

5. If Expenditures in Excess of the Budget are to be Made, Special Procedures Must be Followed

Idaho Code § 31-1608 provides for excess expenditures if needed in the case of emergencies or when mandated by law. If there is insufficient money in the treasury for the expenditures, interest bearing warrants must be issued. These warrants would be included in the next annual budget to be submitted, and money must be included in the appropriations made to cover any unpaid warrants.

If you have further questions on this, please contact me.

Sincerely yours,

STEVE TOBIASON
Deputy Attorney General
Chief, Legislative & Public Affairs Division