

January 27, 1995

The Honorable J.L. "Jerry" Thorne
Idaho State Senate
STATEHOUSE MAIL

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

Dear Senator Thorne:

You have requested our office to review Idaho Code § 49-434A, which provides for the seizure and detention of motor vehicles owned by nonresidents for which the proper registration and operating fees have not been paid. The statute was enacted by the 1994 Idaho Legislature but, according to your letter, has not yet been put in effect by the Idaho Transportation Department because the department has concluded it is not a "law enforcement agency" and thus is not empowered to carry out the new law.

Your question is whether the Idaho Transportation Department (ITD), Port of Entry Unit, qualifies as a "law enforcement agency" under Idaho Code § 49-434A, which reads:

Any motor vehicle or combination of vehicles owned by a nonresident and operated in Idaho for which the proper registration and operating fees in Idaho have not been paid under the provisions of sections 49-432, 49-433, 49-434(5) or 49-435, Idaho Code, shall, upon discovery, be subject to the following penalties:

Seizure and detention for up to seventy-two (72) hours by any law enforcement agency of the vehicle and its entire cargo if the cargo does not consist of perishable food products or livestock;

(1) Release from detention shall be accomplished only by presentation of proper evidence that the applicable fees have been paid; or

(2) Off-loading of any cargo onto a properly licensed and registered vehicle.

(Emphasis added.)

The term “law enforcement agency” is not defined in this section of the Idaho Code, but is defined elsewhere. For example, the Terrorist Control Act, Idaho Code § 18-8102(3), defines “law enforcement agency” as:

a governmental unit of one or more persons employed full time or part time by the state or federal government, or a political subdivision thereof, for the purpose of preventing and detecting crime and enforcing laws or local ordinances and the employees of which are authorized to make arrests for crimes while acting within the scope of their authority.

Essentially the same definition is used in identifying agencies that can access criminal identification records, Idaho Code § 19-4812(b), and that enforce the Uniform Controlled Substances Act, Idaho Code § 37-2701(q).

Thus, the employees of a law enforcement agency are empowered to enforce the laws and to make arrests. Employees of the ITD may issue citations for misdemeanors and infractions. Idaho Code § 40-510. But there is no provision in the Idaho Code that authorizes them to make arrests. Nor can they carry or use a firearm. Idaho Code § 49-510(5).

Other definitions of a “law enforcement agency” simply enumerate particular agencies with law enforcement powers. For example, the Missing Child Report Act defines “law enforcement agency” as:

any law enforcement agency of the state or any political subdivision of the state, including the Idaho department of law enforcement and any municipal or county sheriff department.

Idaho Code § 18-4508(1). Similarly, for purposes of the Idaho Public Records Act, a “law enforcement agency” means:

the office of the attorney general, the office of the state controller, the department of law enforcement, the office of any prosecuting attorney, sheriff or municipal police department.

Idaho Code § 9-335(2). Clearly, the ITD does not qualify as a law enforcement agency under such definitions.

As a practical matter, the Idaho Legislature has limited the authority of the Port of Entry Unit of the ITD to issuing citations for certain nonmoving traffic infractions and misdemeanor violations. Idaho Code § 40-510. Authorized employees of the ITD do not receive peace officer training, which training is a prerequisite to serving as a “peace

officer” for any “police or law enforcement agency . . . whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision.” Idaho Code §§ 19-5101(d) and 19-5109(d).

In short, ITD employees have not received appropriate peace officer training, are forbidden to carry or use a firearm and lack express or implied authority to make an arrest. Thus, they are not “peace officers” or members of a “law enforcement agency” and do not have authority to seize and detain commercial motor vehicles. If the Idaho Legislature intends to confer such authority on ITD employees, an express delegation of authority should be made and the employees should be required to undergo appropriate training as peace officers.¹

Sincerely,

ALAN G. LANCE
Attorney General

¹ You have not asked and we have not addressed concerns that have been raised elsewhere regarding allegations of discriminatory enforcement arising from the fact that the law applies only to motor vehicles owned by nonresidents.