

March 31, 1995

Honorable Pete Cenarrusa  
Secretary of State  
**STATEHOUSE MAIL**

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

Dear Mr. Cenarrusa:

**QUESTION PRESENTED**

Pursuant to Idaho Code § 59-704, the Secretary of State has requested an opinion as to whether the fact that he is a livestock producer and runs sheep on private and federal lands, some of which, being adjacent to state land, presents a conflict of interest to his reviewing state land leases and voting on appeals of actions by the Department of Lands as a State Land Board member.

The fact that Mr. Cenarrusa is a livestock producer and runs sheep on land adjacent to state land presents no conflict of interest under Idaho's Ethics in Government Act found at chapter 7 of title 59 of the Idaho Code.

At statehood, the federal government granted sections 16 and 36 of each township to the State of Idaho for the support of common schools. These lands are referred to as school lands in art. 9, sec. 4 of the Idaho Constitution and are held in trust by the state for the support of Idaho's common or public schools. The state public school fund consists of income derived from the school lands through sales, leases, sale of timber or minerals, and other activities. The interest earned from the public school fund is appropriated annually to support the ongoing operation of Idaho's public schools.

The distribution of state endowment lands creates an interesting "crazy quilt pattern" across the state. In some instances, endowment lands are surrounded by federal land, and in other areas they adjoin private land. This situation makes it extremely difficult for the Idaho Department of Lands to manage isolated state parcels. In recent years, there has been considerable effort to consolidate state holdings through land exchanges with the federal government or with private landowners.

Much of the state land, like much of the land in Idaho, is unfenced. This is because, in many instances, the cost of fencing exceeds the value of the land. Animals roam at large on the open range and may graze upon private land, state land or federal

lands. In addition, animals from one herd may forage on state leases or federal allotments in common with animals from other herds.

The Secretary of State, Pete Cenarrusa, does not hold any state land leases and has not held any state leases since taking office in 1967. Mr. Cenarrusa was a stockholder of the East Side Blaine County Livestock Grazing Association in 1969 when the Association was issued a state grazing lease. The association leased the land until it was dissolved in 1987.

The Secretary of State has remained in the livestock business and is a principal of the Biskay Land and Livestock Company. Biskay owns private grazing land and also holds federal grazing permits. At present, Biskay holds grazing permits within two federal allotments. These allotments are the Iron Mine Allotment and the Wild Horse Allotment.

The Iron Mine Allotment adjoins private land owned by Biskay. The Wild Horse Allotment does not adjoin any land owned by Mr. Cenarrusa or Biskay. Both federal allotments include within their boundaries parcels of school land. Within the Iron Mine Allotment are several parcels of school land presently leased to Schindler Brothers of California, Grazing Lease No. G-7190-1. The lands leased by Schindler Brothers were first leased to them in 1991. Rental is based upon the number of AUMs<sup>1</sup> that it is estimated the land can sustain. Schindler Brothers pay the cattle AUM rate. The Wild Horse Allotment is a common use sheep allotment with several operators holding federal grazing permits; it contains nine sections of unleased state land.

The state land within the Iron Mine Allotment and that within the Wild Horse Allotment are unfenced. While there does not appear to be any intent to graze animals upon this land, it is acknowledged that animals belonging to Biskay as well as animals from other herds may from time to time inadvertently graze upon state lands. The state parcels are not taken into account by the federal government in determining the carrying capacity of the federal allotments adjoining the land. In other words, Biskay may not graze any more animals on the federal land than that land is able to sustain.

The state land leases within the two allotments are administered by the Idaho Department of Lands. "The Land Board has never been required to take any action with respect to the specific parcels of land in question. Consequently, the Secretary of State has never had to cast a vote regarding these lands. State leases are normally issued administratively by the Department without involvement by the Land Board other than the signatures of the Governor and the Secretary of State."

## ANALYSIS

The term conflict of interest has a very specific meaning under Idaho law. Conflict of interest is defined in Idaho Code § 59-703(4):

“Conflict of interest” means any 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, unless the pecuniary benefit arises out of the following . . . .

The statute then goes on to discuss exceptions to the definition of conflict of interest. One of these exceptions has relevance to this case. Subsection (b) of subsection (4) states:

Any action in the person’s official capacity which would affect to the same degree a class consisting of an industry or occupation group in which the person, or a member of the person’s household or business with which the person is associated, is a member or is engaged.

Idaho Code § 59-704 sets forth the actions required to be taken by a public official in cases in which a conflict of interest arises. That code section provides in relevant part:

A public official shall not take any official action or make a formal decision or formal recommendation concerning any matter where he has a conflict of interest and has failed to disclose such conflict as provided in this section. Disclosure of a conflict does not affect an elected public official’s authority to be counted for purposes of determining a quorum and to debate and to vote on the matter, unless the public official requests to be excused from debate and voting at his or her discretion. In order to determine whether a conflict of interest exists relative to any matter within the scope of the official functions of a public official, a public official may seek legal advice from the attorney representing that governmental entity or from the attorney general or from independent counsel. If the legal advice is that no real or potential conflict of interest exists, the public official may proceed and shall not be subject to the prohibitions of this chapter. If the legal advice is that a real or potential conflict may exist, the public official:

. . . .

If he is an elected state public official, he shall prepare a written statement describing the matter required to be acted upon and the nature of the potential conflict, and shall file such statement with the secretary of state prior to acting on the matter. A public official may seek legal advice from the attorney representing that agency or from the attorney general or from independent counsel. The elected public official may then act on the advice of the agency's attorney, the attorney general or independent counsel.

(Emphasis added.)

In the first instance it does not appear that the Secretary of State has a conflict of interest as defined by Idaho Code § 59-703. The Secretary of State does not hold any state land leases and, in voting to establish state grazing rates or on an appeal of a state lease auction or on conflict bids, he is not providing any pecuniary benefit to himself or to his family. In addition, the land leases within the Iron Mine Allotment and within the Wild Horse Allotment have been administered and dealt with solely by the Idaho Department of Lands. Questions involving these two leases have never come before the State Land Board, and the Secretary of State has not been called upon to vote for or against a lease award made by the Department of Lands.

The fact that the Secretary of State is a livestock producer does not create a conflict of interest with respect to his position on the Land Board. Even if Idaho Code § 59-703(4) could be read as defining a conflict of interest in this case, subsection (b) of subsection (4) creates an exception. The Secretary of State is not affected by the establishment of rates for state land leases or the appeal of lease auctions or ruling on conflict bids any more than anyone else in the livestock industry. His interest is simply too remote to be considered a conflict of interest under Idaho law.

If questions involving state land leases within the Iron Mine Allotment or within the Wild Horse Allotment ever come before the Land Board, the Secretary of State may wish to consider this as a potential conflict of interest and deal with it pursuant to the provisions set forth in Idaho Code § 59-704. That code section only requires the disclosure of the conflict of interest and specifically provides that once the conflict is disclosed that the public official with the potential conflict of interest is not disqualified from voting on the matter. Disclosure is being recommended only because it appears to be the most prudent course of action and the one best in keeping with the spirit of the Idaho Ethics in Government Act.

I hope this information is of assistance to you. This letter does not constitute a ruling or official opinion of the Attorney General's Office. It is intended merely to explain the question set forth in your letter of February 22, 1995, and the conclusions set forth in this letter are based on the facts outlined in your letter of February 22, 1995. Obviously, any change in those facts or additional facts could result in a different analysis.

Yours very truly,

WILLIAM A. VON TAGEN  
Director, Governmental and  
Public Affairs

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<sup>1</sup> An "AUM" or "animal unit month" is defined by the Land Board's Grazing Rules as the "[f]orage necessary to feed a cow or cow with calf under six (6) months of age for one month. Five head of sheep, or five ewes with lambs are appraised as one (1) AUM and one horse is appraised as one and one-half (1-1/2) AUM." IDAPA 20.03.14.010.02.