

October 3, 1995

Mr. Philip A. Brown
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624 Main Street
P. O. Box 86
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**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Term Limits for Planning and Zoning Commissioners

Dear Mr. Brown:

You have requested an opinion from the Office of the Attorney General regarding whether the amendments to Idaho Code § 67-6504(a) which established term limits for planning and zoning commissioners apply retroactively. For the reasons set forth below, it is the opinion of this office that the term limits set forth in Idaho Code § 67-6504(a) apply only prospectively.

In the 1995 Session of the Idaho Legislature, H.B. 212a was enacted which amended Idaho Code § 67-6504(a). The statute now sets forth that “[n]o person shall serve more than two (2) full consecutive terms.” The statute does not address the question whether past terms prior to the effective date of the statute (July 1, 1995) must be taken into account. In other words, the question becomes whether a planning and zoning commissioner, who has already served two consecutive terms, can now hold any further office on the commission.

The Idaho Supreme Court has held on numerous occasions that unless the terms of a statute show a clear legislative intent that it should be applied retroactively, a statute should have a prospective operation only. Marmon v. Marmon, 121 Idaho 480, 825 P.2d 1136 (1992); Gailey v. Jerome County, 113 Idaho 430, 745 P.2d 1051 (1987); Edwards v. Walker, 95 Idaho 289, 507 P.2d 486 (1973); Application of Forde L. Johnson Oil Co., 84 Idaho 288, 372 P.2d 135 (1962). An application of this doctrine to the instant question requires a conclusion that prior terms of a commissioner should not be considered. A purely prospective application of the statute would enable commissioners to come in with a fresh slate of terms after the effective date of the amendments to Idaho Code § 67-6504(a). Such a conclusion is a logical extension of the term “prospective.” This is supported by the fact that term limits legislation passed in Idaho and other states regarding elected officials is seen to be “retroactive” if prior terms are considered. J. Richard Brown, Coming to Terms with Congress: A Defense of Congressional Term

Limits, 22 Cap. U. L. Rev. 1095 (1993). A similar construction should be given to the statute in question.

Moreover, this term limit legislation was enacted shortly after the term limit initiative regarding elected officials was passed by the voters of Idaho in 1994. That initiative expressly stated that service prior to January 1, 1995, would not be counted. It is within this context that the term limits legislation for planning and zoning commissioners was enacted. It would not be fair for planning and zoning commissioners to be treated differently in this regard, and we do not think it was the intent of the legislature to bring about such a disparate treatment. While planning and zoning commissioners are not elected officials, their role is still extremely important to city and county government. Therefore, prior terms of planning and zoning commissioners should not be considered, and they can now serve two (2) additional terms.

I hope this guideline is of assistance to Gooding County. If you have any questions, please feel free to contact me.

Very truly yours,

THOMAS F. GRATTON
Deputy Attorney General
Intergovernmental & Fiscal Law Division