

January 7, 1997

The Honorable David Callister  
Idaho House of Representatives  
7011 Holiday Dr.  
Boise, ID 83709

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

Re: Interpretation of Idaho Code § 34-907

Dear Representative Callister:

Thank you for requesting the opinion of the Office of the Attorney General. You have submitted a number of questions relating to Idaho Code § 34-907, which was passed by the voters in 1994. Each of your questions is set out below in bold and followed by an answer.

**1. When does the 8-year term limit for state house or state senate members begin?**

Although Idaho Code § 34-907, the term limits initiative, went into full force and effect on November 23, 1994, section 5 of the initiative made it applicable only to service for terms of office which began on or after January 1, 1995. Section 5 of the initiative specifically provides that service for terms commencing prior to January 1, 1995, shall not be counted.

According to article 3, section 3 of the Idaho Constitution, senators and representatives are elected for a "term of two years, from and after the first day of December next following the general election." For senators and representatives elected on November 8, 1994, their term of office began on December 1, 1994. According to the plain terms and apparent intent of section 5 of the Term Limits Initiative, service for the term beginning December 1, 1994, is not to be counted. The first term to be counted against senators and representatives is the one beginning December 1, 1996.

**2. Does the 8-year limit apply to services rendered in the "legislature" or does its application treat the office of representative and the office of senator individually? In other words, does this law allow a candidate's name to be on the ballot for the state house of representatives if that candidate has just served eight consecutive years in the state senate?**

Idaho Code § 34-907(1)(d) prohibits the name of a person from appearing on the ballot as a candidate for either house of the state legislature when that person has already served in the same office “during eight (8) or more of the previous fifteen (15) years.” The preliminary language of section 34-907(1) states that this prohibition applies to candidates for a state legislative office who “have previously held if they have served, will serve or but for resignation would have served, in that same office” for the allotted time (emphasis added). By their terms, the state house of representatives and the state senate are not the “same office.” Therefore, Idaho Code § 34-907 probably would not prohibit a person’s name from appearing on the ballot as a candidate for the state house if that person had just served for eight years in the state senate.

**3a. If a house member were elected successively from separate districts, would the 8-year term limit apply to the member’s entire service collectively or would the 8-year limit apply separately from each district?**

The office that the individual in your hypothetical question holds is that of state representative. The 8-year time limit found in section 34-907(1)(d) specifically applies to state legislators “representing any district within the state, including house seats within the same district.” Therefore, a house member that already served eight years probably could not appear on the ballot as a candidate for the house in a different legislative district.

**3b. If the 8-year limit is just applicable to service in the same district only, then in the case of a legislative district being altered by reapportionment, what criteria would be used to determine if the altered district was the same district for the purpose of applying the term limit?**

The 8-year limit contained in section 34-907(1)(d) applies to an individual who has held the office of state senator for eight years or more. Likewise, a state representative who has held office for four terms may not be included on the primary or general election ballot for the office of state representative. The potential reapportionment of a particular legislative district probably would have no effect on the application of Idaho Code § 34-907(1)(d) to a candidate running for a fifth consecutive term in the same office.

**4a. After an office holder has served the full term of office as described under this section, and then chooses to run in the primary election by write-in for the same office and is selected as party nominee by receiving the appropriate number of ballots, does Idaho law prevent the candidate’s name from being printed on the general election ballot for that office?**

While the answer to this question is not clear, it appears that the successful write-in candidate could not have his name placed on the general election ballot. Idaho Code § 34-907(1)(d) prohibits the name of a person from appearing on the ballot as a candidate for either house of the state legislature when that person has already served in the same office “during eight (8) or more of the previous fifteen (15) years.” This prohibition probably includes successful primary write-in candidates. If the hypothetical scenario you pose actually occurred, it is uncertain who would appear on the general election ballot for the successful write-in candidate’s party. This is an area that the legislature may wish to clarify.

**4b. Are there conflicting provisions of Idaho Code on this matter?**

Idaho Code § 34-906 states that the general election ballot must contain “the complete ticket of each political party.” Each “political party ticket shall include that party’s nominee for each particular office.” In the hypothetical posed in question 4a, it would be impossible to comply with the requirements of Idaho Code § 34-906 while also honoring the limitations of Idaho Code § 34-907(1)(d).

**4c. Which provisions prevail?**

There are two general rules of statutory construction that govern the outcome of this question. First, when there is an irreconcilable inconsistency between two statutes, the most recent statute governs. *See, e.g., State v. Betterton*, 127 Idaho 562, 903 P.2d 151 (1995). In this case, Idaho Code § 34-906 was last amended in 1977, while Idaho Code § 34-907 was enacted in 1994. Second, a specific statute will control over a more general statute. *See, e.g., City of Sandpoint v. Sandpoint Indep. Highway Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994). Section 34-906 governs the content of ballots in a general way, while section 34-907 specifically limits ballot access for certain incumbents. Both of these rules of statutory interpretation suggest that section 34-907 will probably prevail over section 34-906.

I hope this letter is of help to you. If you have any additional questions or comments, please feel free to call upon me.

Sincerely,

MATTHEW J. MCKEOWN  
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Intergovernmental and Fiscal Law Division