

April 30, 1997

Mr. Don Heikkila, Chairman
Idaho Soil Conservation Commission
P. O. Box 83720
Boise, ID 83720-0083

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

Dear Mr. Heikkila:

Your request for guidance on the question of your Commission's relationship with the Idaho Department of Agriculture has been forwarded to me for response. In 1984, the Department of Lands sought and received guidance on the statutory relationship between the Department of Lands and the Soil Conservation Commission ("Commission"). In 1997, the legislature enacted S.B. 1241 (1997 Idaho Sess. Laws, ch. 180), which severed the relationship between the Department of Lands and the Commission, and placed the Commission in a similar relationship with the Department of Agriculture ("Department"). In light of the recent statutory changes, the Commission has requested that this office review and update the 1984 guidance.

QUESTIONS

1. What is the nature of the relationship between the Soil Conservation Commission and the Department of Agriculture?
2. What is the nature of the relationship between the Soil Conservation Commission and the director of the Department of Agriculture?
3. What is the nature of the relationship between the administrator of the Soil Conservation Commission, and the director of the Department of Agriculture?
4. What is the nature of the relationship between the Soil Conservation Commission and the administrator of the Soil Conservation Commission?
5. Does the Commission staff report to the Commission administrator and Commission or to the Department of Agriculture director?

ANSWERS

The legislative changes enacted by the 1997 legislature through S.B. 1241 did little to clarify the ambiguities identified in the 1984 guidance letter and, in fact, raise additional questions about the nature of the relationships which you identified in your questions.

1. The relationship between the Soil Conservation Commission and the Department of Agriculture is cooperative in nature.
2. The relationship between the Soil Conservation Commission and the director of the Department of Agriculture (director) is cooperative in nature.
3. Beyond the director's power of appointment, the statute provides no guidance regarding the relationship between the administrator of the Commission (administrator) and the director. The legislature has left it to the parties to forge a functioning organizational structure.
4. The statute provides no guidance regarding the relationship between the Commission and the administrator, leaving it to the respective parties to create a workable organizational structure.
5. The reporting relationships among the Commission staff, the Commission, and the administrator are internal Commission matters. Since the Commission retains the power to hire staff, it is within the Commission's power to establish the lines of authority and reporting relationships of staff.

ANALYSIS

1. Background

The soil conservation district law was enacted in 1957 (1957 Idaho Sess. Laws, ch. 218, p. 476, codified as Idaho Code § 22-2714 *et seq.*). The act created the Soil Conservation Commission as an agency of the State of Idaho and provided for the creation of soil conservation districts. The three-member Commission was granted the authority to employ an administrator and staff to carry out its statutory functions.

In 1967, the Commission was increased from three to five members and the requirements for appointment of Commissioners were revised (1967 Idaho Sess. Laws, ch. 28, p. 48).

The next substantive change to the soil conservation district law occurred in 1974. The 1974 legislature reorganized state government by consolidating agencies and functions to reduce the number of state agencies to 20 (1974 Idaho Sess. Laws, ch. 17, p. 308). At that time, the Soil Conservation Commission was placed within the Department of Lands. The 1974 legislation did little, however, to impact the independence of the Soil Conservation Commission. As discussed in the 1984 legal guidance memorandum, the Department of Lands exercised no direct control or authority over the Commission, its administrator, or its staff. The nature of the relationship between the Department of Lands and the Commission was solely cooperative.

2. 1997 Legislation

No other substantive changes were made to the soil conservation district law until the 1997 changes, which precipitated this request for guidance. The 1997 legislation included several changes of note. First, it added language to the legislative determination and declaration of policy (Idaho Code § 22-2716(D)) emphasizing that the responsibilities of the Commission included providing “support and service to soil conservation districts in the wise use and enhancement of soil, water and related resources.”

Second, the legislation removed the Commission from within the Department of Lands and placed it within the Department of Agriculture. According to the statement of legislative intent, the relocation from the Department of Lands to the Department of Agriculture was “designed to maximize technical staff expertise, increase efficiency, enhance productivity, and reduce duplication of efforts.”

Third, the legislation provided for a change in the manner of appointment of the administrator of the Commission. Formerly, the appointment of an administrator was a function within the sole discretion of the Commission. The 1997 legislation gave to the director of the Department of Agriculture the authority to “appoint the administrator of the Soil Conservation Commission from persons recommended by the Soil Conservation Commission.” The Commission retains the authority to employ such other staff as it deems necessary.

3. Discussion of Questions

Question 1 concerns the relationship between the Commission and the Department of Agriculture. The 1997 legislation made no changes in the language governing the relationship between the Commission and the Department when it moved the Commission from the Department of Lands to the Department of Agriculture. There is nothing in the legislative history which suggests that the association between the Commission and the Department be anything other than cooperative in nature. Neither

the Commission nor the director of the Department has any direct authority over the other.

Question 2 concerns the relationship between the Commission and the director of the Department of Agriculture. While the 1997 legislation does not explicitly change the cooperative nature of the relationship between the Commission and the director, the legislation does cause a shift in the relative relationship of the two entities. As a practical matter, the 1997 legislation effects a division of power between the Commission and the director without specifically delineating what powers are distributed or to whom they are granted. This occurs as a result of the change in the manner of appointment of the administrator of the Commission, discussed elsewhere in this memorandum.

Both the senate and house committee minutes note that S.B. 1241 was a compromise bill drafted in response to strong objections to an original bill (S.B. 1147). As proposed, S.B. 1147 included provisions which would have resulted in major changes to the soil conservation district laws, substantially impacting the independence of the Commission. The fact that a compromise bill, which retains the Commission's control over its staff and requires that the Commission and the director act jointly in appointing an administrator was enacted, supports the conclusion that the relationship between the Commission and the director be cooperative. If either entity acts without regard to the other's concerns, the likelihood of an impasse looms large. Thus, it appears that cooperation is not merely a suggestion, but a necessity.

Questions 3 and 4 concern the relationship between the administrator and the director and the relationship between the administrator and the Commission. Clearly, the 1997 legislation altered these relationships when it transferred the Commission's authority to appoint an administrator to the director of the Department. This change affects the relationship between the administrator and the director, the Commission and its administrator, and as mentioned previously, the relationship between the Commission and the director. A careful review of the legislation, together with legislative history, provides no guidance as to the precise nature of these relationships. Rather, the legislative history suggests that the legislature intentionally left these issues to be resolved by the parties.

a. The Administrator of the Commission and the Director of the Department

The legislative changes transfer the authority to appoint the Commission's administrator from the Commission itself to the director of the Department. This change does *not* give the director of the Department complete autonomy in the appointment of the administrator, however. The director must appoint the administrator "from persons recommended by the Soil Conservation Commission." This language creates a division of power between the Commission and the director. The ambiguity that this creates was

pointed out during the committee hearings on Senate Bill 1241. A number of individuals expressed concerns regarding the chain of command and inquired about organizational structure and reporting relationships (Minutes of the House Agricultural Affairs Committee, March 10, 1997). Commissioner Robert Griffel responded to these concerns by stating that the Commission still needs “to work out concerns such as have been expressed today. All of these things can be worked out, but it takes time.” *Id.* The legislature could have resolved this uncertainty by specifying the relationship between the director and the administrator, but it chose not to, leaving the matter to be resolved by the parties themselves.

b. The Commission and the Administrator of the Commission

The responsibilities of the administrator were not enumerated in the prior statute, nor are they discussed in the 1997 legislation. Now, the director, rather than the Commission, has the authority to appoint the administrator, but nothing in the 1997 legislation suggests that the responsibilities of the administrator have changed. As discussed with regard to the relationship between the administrator and the director, above, this ambiguity is not inadvertent. The legislature has left it up to the parties to create an organizational structure which is functional and allows the respective parties to perform their statutory obligations cooperatively.

Question 5 asks whether the Commission staff reports to the Commission and administrator or to the director. Following the 1997 statutory changes, the Commission retained the authority to “employ such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation.” (Idaho Code § 22-2718.) Reporting relationships among the staff, administrator and Commission remain an internal matter to be resolved by the Commission.

CONCLUSION

The 1997 changes to the soil conservation district law result in a slight shift in the balance of power between the Soil Conservation Commission and the agency with which it is associated. The Commission, however, remains an independent entity in a cooperative endeavor with the Department of Agriculture. The legislature left to the Commission and the director of the Department of Agriculture the responsibility to further define this relationship.

The Commission or the director may seek further clarification of this relationship by agreement, executive order, or further legislative action. If this office can be of assistance in any of these venues, please feel free to contact us.

Sincerely,

RINDA JUST
Deputy Attorney General
Natural Resources Division