

April 28, 1998

Retirement Board
Public Employee Retirement System of Idaho
607 N. Eighth Street
Boise, ID 83702

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

To the Members of the Retirement Board:

This is in response to your request for legal guidance on the issue of whether public school superintendents fall within the exceptions of Idaho Code § 59-1347. That section generally requires that PERSI members have five years of credited service before becoming vested (*i.e.*, eligible for a retirement benefit). However, there are three exceptions to this general rule.

As set forth in the statute, the exceptions are for inactive members, who at the time of separation from service either: (1) held an office to which they had been elected by popular vote or having a term fixed by the constitution, statute or charter or were appointed to such office by an elected official (“fixed term” exception); (2) were the head or director of a department, division, agency, statutory section or bureau of state government (“head of state agency” exception); or (3) were employed on or after July 1, 1965, by an elected official of the State of Idaho and occupied a position exempt from the provisions of title 67, chapter 53, Idaho Code (“non-classified state employee” exception).

The position of school district superintendent clearly does not fall into the “fixed term” exception because it is neither an elected office nor an office with a fixed term. It also fails clearly to meet the “non-classified state employee” exception since that applies only to non-classified positions within the state personnel system. The question is whether a school district superintendent falls within the “head of state agency” exception—a head or director of a state department, division, agency, statutory section or bureau.

It has previously been suggested, based on a trilogy of Idaho Supreme Court cases between 1931 and 1954, that school districts are generally “agencies of the state” and, therefore, are also “agencies” for purposes of Idaho Code § 59-1347.¹ However, before that conclusion can be drawn, it is first necessary to look at what the court meant by “agency of the state” in its decisions, and then to determine how it affects, if at all, what was intended in section 59-1347. With this in mind, the question is more accurately restated as whether a school district superintendent is the head or director of a state

department, division, agency, statutory section or bureau *for purposes of Idaho Code § 59-1347*.

ANALYSIS

A. “Agency” as Used by the Court

The previous opinions of the Idaho Supreme Court do not support the proposition that school districts are generally “agencies of the state.” Instead, they support the proposition that school districts are agencies of the state in a limited sense applicable to specific and limited purposes. For instance, in the first case, Common School District No. 61 v. Twin Falls Bank & Trust, 50 Idaho 711, 4 P.2d 342 (1931), the question was whether the school district was engaged in a governmental function when it countersigned a forged warrant which was in turn cashed by the bank. In rejecting the bank’s argument that the school district was estopped from recovering from the bank, the court held that the doctrine of estoppel could not be asserted since the school district was “a subdivision of the state exercising governmental functions.”² 50 Idaho at 718, 4 P.2d at 344. Therefore, in this decision, the court held only that the school district was an “agency of the state” for purposes of applying estoppel; that it was a governmental entity, performing governmental functions authorized by statute.

In the second case, Independent School Districts v. Common School District 1, 56 Idaho 426, 55 P.2d 144 (1936), several districts filed suit claiming that certain funds were misapportioned, resulting in less funding than they were entitled to receive. In concluding that the school districts had the right, indeed, the duty, to seek the misapportioned funds, the court cited the first case of Twin Falls Bank & Trust for the proposition that:

[T]he school district is a mere agency of the state . . . charged with the sovereign duty of maintaining the schools within its particular territory of the state and of receiving funds and property and managing, controlling and expending the same in the interest of public education. In this respect and for *this purpose* the school district is the agent of the state in its particular territory.

56 Idaho at 432, 55 P.2d at 146. Here, the court puts in context the statement made in Twin Falls Bank & Trust and explicitly recognizes that school districts are “agencies of the state” in a limited sense.

Similarly, in the third case, Bullock v. Joint Class “A” School Dist. No. 241, 75 Idaho 304, 272 P.2d 292 (1954), the court cited the second case of Independent School Districts for the proposition that defendant school district was “an agency of the state.” In deciding whether an action in tort could lay against the school district for allegedly

improperly reassigning and then discharging a teacher, the court concluded that since the board was acting within the scope of its authority conferred by law in performing a “governmental function” for the state, no action in tort would lie against the board. 75 Idaho at 311, 292 P.2d at 296. Once again, the court uses “agency” in the limited sense that the school district existed under statutory authority and served a governmental function. This gave it effective immunity from tort liability but did not make it an agency of the state for all purposes. This view is consistent with recent case law and statutory provisions.

In Smith v. Meridian Joint School Dist. No. 2, 128 Idaho 714, 918 P.2d 583 (1996), the court addressed whether school board decisions were subject to the Idaho Administrative Procedure Act (APA). The question turned on whether a school district was an “agency” as defined by the act. According to the court, the two essential elements of that definition were (1) that the actor be a state board, commission, department or officer, and (2) that the actor be authorized by law to make rules or to determine contested cases. 128 Idaho at 721, 918 P.2d at 590. In concluding that a school district did not meet the elements of the definition, the court stated:

A school district, once validly organized and in existence, is a "body corporate and politic" and may sue or be sued, may acquire, hold, and convey real and personal property, and may incur debt as provided by law. I.C. Section 33-301. The board of trustees of each school district is authorized by statute to perform administrative and organizational tasks for the school district. I.C. Sections 33-303, -304, -307, -308, -309, -310. While a school district, through its board of trustees may work with state boards, commissions, or departments, the school districts and boards of trustees are separate entities and do not constitute a state board, commission, department, or officer under I.C. Section 67-5201.

128 Idaho at 721, 722, 918 P.2d at 590, 591 (emphasis added).

Interestingly, the court then reviewed its earlier trilogy of cases dealing with school districts as “agencies of the state,” further emphasizing that school districts are “agencies of the state” only in a limited sense and for limited purposes:

In cases pre-dating the adoption of the APA, the Court concluded that school districts were agencies of the state for purposes of operating a school district, *Common Sch. Dist. No. 61 v. Twin Falls Bank & Trust Co.*, 50 Idaho 711, 716, 4 P.2d 342, 343 (1931), carrying out its duties of maintaining the schools within its district, *Independent Sch. Dists. v. Common Sch. Dists.*, 56 Idaho 426, 432, 55 P.2d 144, 146 (1936), and establishing tort duties of the school district, *Bullock v. Joint Class "A" Sch. Dist. No. 241*, 75 Idaho 304, 311, 272 P.2d 292, 296 (1954); *Anneker v.*

Quinn-Robbins Co., 80 Idaho 1, 8, 323 P.2d 1073, 1077 (1958). However, since the Idaho legislature's enactment of the APA in 1965, 1965 Sess. Laws, S.B. No. 238, Ch. 273, p. 701, no Idaho cases have held that a school district is an "agency" for purposes of APA review.

128 Idaho at 722, 918 P.2d at 591 (emphasis added).

This is also consistent with statutory law. Idaho Code § 67-2402(1) sets forth the organizational structure of state government consistent with art. 4, sec. 20 of the Idaho Constitution. It provides that all "offices, agencies and instrumentalities" of the state (except those assigned to elected constitutional officers) are "allocated among and within" nineteen specified departments. School districts are not "among" those listed. In fact, in 1978 this provision was amended, not to include school districts, but to provide only that school districts were "civil departments of state government" for the limited purpose of purchasing state endowment land at appraised prices. 1978 Idaho Sess. Laws 519.

Although it is clear that school districts are not "among" those listed, it has been suggested that they are "within" the listed departments, namely, the state board of education. However, that argument is severely undercut by the 1978 amendment. If school districts were already agencies of the state by virtue of being "within" the state board of education, there would have been no need to amend the provision to give them limited authority—they would have already had the authority. It is also inconsistent with Smith v. Meridian Joint School Dist. No. 2, cited earlier, which rejected the same argument in holding that despite the general supervision of the state board, school districts are not a part of the state board of education. 128 Idaho at 722, 918 P.2d at 591.

Instead, it was recognized that school districts were not agencies of the state in the general sense and, as a result, specific statutory authority was needed to exempt them from the competitive bidding requirements for purchase of state endowment lands. Consequently, it appears that the law is, and always has been, that school districts generally are not "agencies of the state" except in the narrow sense that they are instrumentalities of the state performing governmental functions and as such are sometimes treated as "agencies of the state" for limited and specific purposes.

B. "Agency" as Used in Idaho Code § 59-1347

When PERSI was originally established, there were no exceptions to the vesting requirement. The law simply required that:

An inactive member is eligible for vested retirement if he has at least ten years of membership service and is within ten years of the date he would

have been eligible for service retirement had he remained an active member.

1963 Idaho Sess. Laws 997.

Two years later, the law was amended to add the “fixed term” and “head of state agency” exceptions and was designated as Idaho Code § 59-1310(4).³ Although there is no legislative history to shed additional light on what was intended, the language itself is quite narrow and limiting. For instance, the “fixed term” exception applies only to individuals who have either been elected or appointed to an office which is either an elected office or one with a term fixed by law or charter.⁴ This exception applies primarily to elected officials (for which it is all inclusive), but also to a limited group of appointed officials who have fixed terms, primarily members of state boards and commissions.⁵

When viewed in context, the “head of state agency” exception is also very narrow. This is apparent in the PERSI statutes which make a clear distinction between the “state” and its political subdivisions. For example, where all employees of the “state” were included in PERSI, “political subdivisions” of the state had to elect to include their employees. Additionally, “State” is defined as the “State of Idaho” whereas “employer” is defined as both the “State of Idaho or any political subdivision which has elected to come into the system.” Idaho Code §§ 59-1302(15) and 59-1302(35). Consequently, by definition, “State of Idaho,” as used in the PERSI statutes, does not include its political subdivisions. Viewed in this context, it is clear that the “head of state agency” exception was intended to include only appointed “heads” within the organizational structure of state government—not within its political subdivisions.

This view is supported by the fact that the exception would not have been relevant to participating political subdivisions at the time it was adopted. They included primarily cities, counties and other taxing districts, which are all headed by elected, not appointed, officials. It is also supported by the further restriction that to qualify under these exceptions an employee must be nonclassified.⁶ Finally, at that time, school districts were not participants in PERSI but, instead, had their own retirement system.⁷ This clearly demonstrates there was no intent to include school districts in this exception and is further indication of the limited application of the “head of state agency” exception. Therefore, when this exception was adopted, there was only one group of PERSI members that came under its umbrella and that was state employees who were heads or directors in the executive branch of government. Although the provision in question has been subsequently amended to include a third exception,⁸ reduce the length of service for vesting from ten years to five years,⁹ and to redesignate the provision as section 59-1347,¹⁰ nothing has expanded the scope of the “head of state agency” exception to include political subdivisions.

CONCLUSION

Although the Idaho Supreme Court has held that school districts are “agencies of the state” for limited and specific purposes, they are not generally agencies of the state. The “head of state agency” exception in Idaho Code § 59-1347 is applicable only to organizational units of state government and not to political subdivisions of the state. Consequently, school district superintendents do not fall within that exception or any other exception that would allow them to vest with less than five years of service.

This guideline letter replaces and supersedes any previous letter opinions issued by this office on the same subject.

Very truly yours,

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¹ The series of cases include Common School District No. 61 v. Twin Falls Bank & Trust, 50 Idaho 711, 4 P.2d 342 (1931); Independent School Districts v. Common School District 1, 56 Idaho 426, 55 P.2d 144 (1936); and Bullock v. Joint Class “A” School Dist. No. 241, 75 Idaho 304, 272 P.2d 292 (1954). Each case is separately addressed in the body of this guideline.

² Traditionally, the doctrine of estoppel has had limited application to governmental entities.

³ As amended, the law then read as follows:

An inactive member is eligible for vested retirement if he has at least ten years of membership service and is within ten years of the date he would have been eligible for service retirement had he remained an active member, *except that an inactive member, who at the time of his separation from service held an office to which he had been elected by popular vote or having a term fixed by the constitution, statute or charter or was appointed to such office by an elected official, or was the head or director of a department, division, agency, statutory section or bureau of the state, is eligible for vested retirement regardless of length and type of service, unless covered by a merit system for employees of the state of Idaho.* 1965 Idaho Sess. Laws 324, 325 (H.B. 255).

⁴ This would include, for example, individuals appointed to an elected office due to a vacancy.

⁵ Many of these offices are enumerated in Idaho Code § 67-2601.

⁶ As written, this restriction applies to all exceptions. However, arguably, the restriction was intended to apply only to the second exception since it has no practical application to the first. That class of employees normally would be exempt anyway due to the nature of the positions held.

⁷ It was not until 1967 that legislation was passed which abolished the school retirement system and transferred school district retirement to PERSI. The transfer was effective July 1, 1967. 1967 Idaho Sess. Laws 222 (H.B. 144).

⁸ 1967 Idaho Sess. Laws 1191, 1192 (S.B. 172).

⁹ 1971 Idaho Sess. Laws 114 (S.B. 1022).

¹⁰ 1971 Idaho Sess. Laws 114 (S.B. 1022).