

ATTORNEY GENERAL OPINION 99-1

The Honorable John H. Tippets
Idaho House of Representatives
Idaho State Legislature
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTION PRESENTED

Does the ballot access restriction contained in Idaho Code § 34-907(1)(c) apply to members of the judiciary?

CONCLUSION

The phrase "state elected official" is not defined in the Idaho Code. However, this office believes that a reviewing court probably will conclude that the judiciary is not included in the ballot access restriction created by Idaho Code § 34-907(1)(c).

ANALYSIS

Idaho Code § 34-907 was enacted by voter initiative, along with Idaho Code §§ 50-478 and 33-443, during the 1994 general election. Collectively, these provisions appeared on the ballot as "Proposition 2." The statutes enacted through Proposition 2 established ballot access restrictions for a variety of incumbent federal state and local officials. While ballot access restrictions for federal elected officials were ruled unconstitutional by the United States Supreme Court in United States Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995), Proposition 2's ballot access restrictions for state and some local officials remain in place.

As an initial matter, art. 3, sec. 1 of the Idaho Constitution states that the voters of Idaho may exercise the power to enact legislation without the legislature:

This power is known as the initiative, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.

Idaho Const., art. 3, §1.

The Idaho Supreme Court has determined that the initiative is “on equal footing” with acts of the legislature. Luker v. Curtis, 64 Idaho 703, 706, 136 P.2d 978, 979 (1943). Therefore, in attempting to interpret the phrase “state elected official,” a reviewing court is likely to use whatever information was prepared in connection with Proposition 2 to determine the meaning of language within the proposition in the same way that a court would use legislative history to determine the meaning of statutory language adopted by the legislature.

Idaho Code § 34-907(1)(c) prohibits a person’s name from appearing on an election ballot if that person has served as “a state elected official, during eight (8) or more of the previous fifteen (15) years.” The phrase “state elected official” is not defined in the Idaho Code. Therefore, it is possible to argue that since members of the judiciary are subject to retention elections every four or six years, they should then be considered state elected officials for purposes of Idaho Code § 34-907(1)(c). However, there are two factors that serve to undercut this conclusion.

First, the ballot title for the initiative enacting term limits in 1994 stated that Idaho Code § 34-907(1)(c) is limited to “state executive offices”:

PROPOSITION TWO
AN INITIATIVE ESTABLISHING TERM LIMITS FOR ELECTED FEDERAL,
STATE, COUNTY, MUNICIPAL AND SCHOOL DISTRICT OFFICIALS

Initiative relating to the number of years an elected official may serve: providing a new section to the Idaho Code, § 34-907, limiting the number of years a person may serve in the following elected offices by restricting eligibility to appear on the ballot after serving a prescribed number of years: United States House of Representatives, United States Senate, state executive offices, state legislature, county elected offices; providing a new section to the Idaho Code, § 50-478, restricting municipal officers’ eligibility to appear on the ballot after serving eight years in one position; providing a new section to the Idaho Code, § 33-443, restricting school district trustees’ eligibility to appear on the ballot after serving six years in one district; providing that any person may stand for election as a write-in candidate; providing an effective date of January 1, 1995; providing that service prior to that date shall not be counted for purposes of ballot eligibility and providing a severability clause.

(Emphasis added.)

Naturally, members of the judiciary do not hold “state executive offices.” Put another way, judges and justices are not officers of the executive branch of government. They are officers of the judicial branch governed by art. 5 of the Idaho Constitution.

Idaho Code § 34-1809 sets out a formal process for the development of ballot titles. They are intended to be a “true and impartial statement of the purpose of” the initiative. Idaho Code § 34-1809. In preparing these titles, the office of the attorney general is performing “a quasi judicial function.” In re Idaho State Fed’n of Labor, 75 Idaho 367, 374, 272 P.2d 707, 711 (1954). As a result, a reviewing court is likely to place great importance on how a ballot title describes the application of a voter initiative. If a reviewing court follows the ballot title that was developed for Idaho Code § 34-907(1)(c), then the court is likely to rule that ballot access restrictions apply only to executive branch officers, not to members of the judiciary.

Second, the event that triggers Idaho Code § 34-907(1)(c)’s ballot access restriction is the holding of a “state elected office” for eight or more years after January 1, 1995. For every official covered by section 34-907(1)(c), the statutory limit coincides with the end of the second term of office. If the provision applied to members of the Idaho Supreme Court, for example, the eight-year limit would occur at the midpoint of each justice’s second term because art. 5, sec. 6 of the Idaho Constitution establishes six-year terms for members of the Idaho Supreme Court. A reviewing court is likely to conclude that section 34-907(1)(c) does not apply to members of the judiciary because it does not reflect the actual term of office for some members of the judiciary.

AUTHORITIES CONSIDERED

1. Idaho Constitution:

Art. 3, § 1.

Art. 5.

Art. 5, § 6.

2. Idaho Code:

§ 33-443.

§ 34-907.

§ 34-907(1)(c).

§ 34-1809.

§ 50-478.

3. Federal Cases:

United States Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995).

4. Idaho Cases:

In re Idaho State Fed'n of Labor, 75 Idaho 367, 374, 272 P.2d 707, 711 (1954).

Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943).

Dated this 17th day of March, 1999.

Sincerely,

ALAN G. LANCE
Idaho Attorney General

Analysis by:

MATTHEW J. MCKEOWN
Deputy Attorney General