



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

**ATTORNEY GENERAL OPINION NO. 10-2**

To: The Honorable Denton Darrington  
The Honorable Richard Wills  
**STATEHOUSE MAIL**

Per Request for Attorney General's Opinion

You have requested an Attorney General's opinion regarding whether the Legislature may mandate that a duly-elected sheriff be certified by the Police Officer Standards and Training ("POST") Council either prior to his or her election or within a reasonable time following his or her election. This opinion addresses that question.

**QUESTION PRESENTED**

May the Idaho Legislature require a sheriff to be certified by POST either prior to his or her election or within a reasonable period of time following his or her election?

**CONCLUSION**

The Idaho Legislature currently requires sheriffs to satisfy certain requirements including, in the case of first-time sheriffs who have not previously been certified by POST, completion of a tutorial prescribed by POST and other training requirements. The Legislature could expand the qualification requirements to include POST certification.

**ANALYSIS**

The Office of Sheriff is provided for in Art. XVIII, sec. 6 of the Idaho Constitution, which provides, in relevant part:

The legislature by general and uniform laws shall, commencing with the general election in 1986, provide for the election biennially, in each of the several counties of the state, of county commissioners and for the election of a sheriff, a county assessor, a county coroner and a county treasurer, who

is ex-officio public administrator, every four years in each of the several counties of the state.

Idaho Const. art. XVIII, § 6.<sup>1</sup>

Art. XVIII, sec. 6 contains the only reference to the Office of Sheriff in the Idaho Constitution. In 1914, the Idaho Supreme Court, in interpreting art. XVIII, sec. 6, stated:

This provision of the Constitution creates, by specific reference all county officers as constitutional officers, and provides that the legislature, by general and uniform laws, shall provide for municipal officers as public convenience may require, and prescribe their duties and fix their terms of office. This provision of the constitution distinguishes county officers from municipal officers, making the first constitutional officers, while the creation of municipal officers is left wholly with the legislature.

Hodges v. Tucker, 25 Idaho 563, 572, 138 P. 1139, 1141 (1914).

That a sheriff is a constitutional officer in the sense that the Legislature **must** provide for his or her election, *i.e.*, the Legislature cannot eliminate the Office of Sheriff absent a constitutional amendment, does not mean the Legislature is prohibited from requiring a sheriff to meet certain qualifications, which are not mandated by the Constitution. In fact, the Legislature already does so.<sup>2</sup> Idaho Code § 34-618 provides:

**Election of county sheriffs – Qualifications.** – (1) At the general election, 1972, and every four (4) years thereafter, a sheriff shall be elected in every county.

(2) No person shall be elected to the office of sheriff unless he has attained the age of twenty-one (21) years at the time of election, is a citizen of the United States and shall have resided within the county one (1) year next preceding his election.

(3) Each candidate shall file his declaration of candidacy with the county clerk.

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<sup>1</sup> Art. XVIII, sec. 6 currently reads substantially the same as when it was originally enacted. With respect to the Office of Sheriff, the only notable changes are (1) the original provision did not include the “commencing with the general election” language, which first appeared in 1948 using the election year 1950, and was later amended four times from 1950 to 1962 to 1964 to 1970 and finally to 1986; and (2) the original provision included a sentence prohibiting the sheriff and county assessor from holding the term of office immediately succeeding the term for which he was elected, which was deleted in 1909. 1909 Idaho Sess. Law 439 (S.J.R. No. 6).

<sup>2</sup> The Legislature also requires other constitutional officers to meet certain qualifications, which are not specified in the Idaho Constitution. *See, e.g.*, I.C. § 34-615 (qualifications for district judges (compare with Idaho Const. art. V, § 23)); I.C. § 34-617 (qualifications for county commissioner (compare with Idaho Const. art. XVIII, §§ 6, 10)).

(4) Each candidate who files a declaration of candidacy shall at the same time pay a filing fee of forty dollars (\$40.00) which shall be deposited in the county treasury.

(5) Each person who has been elected to the office of sheriff for the first time shall complete a tutorial concerning current Idaho law and rules as prescribed by the Idaho peace officers standards and training academy, unless the person is already certified as a chief of police, peace officer or detention deputy in the state of Idaho, and shall attend the newly elected sheriffs' school sponsored by the Idaho sheriffs' association.

Most notable among the qualifications listed for purposes of this opinion are, of course, the qualifications listed in subsection (5), requiring a first-time sheriff to complete a tutorial prescribed by POST unless he or she is already certified. If the Legislature can compel completion of a tutorial through POST and attendance at the "newly elected sheriffs' school," it can undoubtedly require certification. Thus, the question becomes whether section 34-618 comports with the Constitution. The answer to that question is yes.

In Leonardson v. Moon, 92 Idaho 796, 806, 451 P.2d 542, 552 (1969), the Idaho Supreme Court recognized: "Unlike the federal constitution, the state constitution is a limitation, not a grant, of power." Thus, the Court "look[s] to the state constitution not to determine what the legislature may do, but to determine what it may not do. If an act of the legislature is not forbidden by the state or federal constitutions, it must be held valid." *Id.* (citing Eberle v. Neilson, 78 Idaho 572, 306 P.2d 1083 (1957); Idaho Telephone Company v. Baird, 91 Idaho 425, 423 P.2d 337 (1967)). Consistent with this, it is clear the "legislature may prescribe duties in addition to those prescribed by the Constitution, provided, those prescribed by the legislature do not conflict with the duties either expressly or impliedly prescribed by the Constitution." Wright v. Callahan, 61 Idaho 167, 178, 99 P.2d 961, 965 (1940). This principle logically extends to the Legislature's ability to prescribe certain qualifications required of a constitutional officer so long as those qualifications do not conflict with the qualifications prescribed by the Constitution.

Although not directly on point, Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975), is instructive. In Robinson, the Idaho Supreme Court considered a challenge to the election laws based on the Bonneville County Clerk's refusal to print the name of a putative candidate for county commissioner on the general ballot after his unsuccessful bid in the primary election. *Id.* The Court rejected the challenge and held "the Idaho election laws constitutional." *Id.* at 200, 541 P.2d at 624. In doing so, the Court recognized: "Individuals who wish to run for public elective office (including county commissioner) must meet certain qualifications." *Id.* at 201, 541 P.2d at 625. Implicit in this statement and the Court's ultimate holding is that requiring an elected official to satisfy certain qualifications is constitutionally permissible.

The United States Supreme Court's opinion in Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L.Ed.2d 714 (1974), is also instructive. At issue in Storer was a provision of the California Elections Code that "forbids ballot position to an independent candidate for elective public office if he voted in the immediately preceding primary," "or if he had a registered affiliation with a qualified political party at any time within one year prior to the immediately preceding primary election." *Id.* at 72. The constitutionality of these provisions was challenged, in part, "as adding qualifications for the office of the United States Congressman, contrary to Art. I, s 2, cl. 2, of the Constitution." *Id.* In analyzing the constitutional question, the Court noted that "a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Id.* at 733 (citing Jenness v. Fortson, 403 U.S. 431, 442 (1971)). As such, a state may, in furtherance of its interests and consistent with the Constitution, limit access to its ballots and impose candidacy requirements. *Id.* at 732-733. As applied here, the State of Idaho undoubtedly has an interest in ensuring that individuals elected to the Office of Sheriff who, along with county prosecutors, are vested with the "primary duty of enforcing all the penal provisions of any and all statutes of this state" I.C. § 31-2227, meet certain minimum requirements up to and including POST certification, which is, by statute, required of all other peace officers in the State of Idaho, including deputy sheriffs. *See* I.C. § 19-5109.

In sum, the Idaho Constitution does not prohibit the Legislature from imposing certain qualifications on sheriffs, including the requirement that they be POST certified.

### **AUTHORITIES CONSIDERED**

**1. Idaho Constitution:**

Art. V, § 23.  
Art. XVIII, § 6.  
Art. XVIII, § 10.

**2. Idaho Code:**

§ 19-5109.  
§ 31-2227.  
§ 34-615.  
§ 34-617.  
§ 34-618.

**3. United States Supreme Court Case:**

Storer v. Brown, 415 U.S. 724, 94 S. Ct. 1274, 39 L.Ed.2d 714 (1974).

**4. Idaho Cases:**

Hodges v. Tucker, 25 Idaho 563, 138 P. 1139 (1914).

Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Robinson v. Bodily, 97 Idaho 199, 541 P.2d 623 (1975).

Wright v. Callahan, 61 Idaho 167, 99 P.2d 961 (1940).

DATED this 10<sup>th</sup> day of February, 2010.



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**ANALYSIS BY:**

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