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ATTORNEY GENERAL OPINION NO. 90-3

TO: Mr. Terry Thompson
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Per Request for Attorney General's Opinion

QUESTION PRESENTED:

The 1990 Centennial Legislature enacted Senate Bill 1535, as twice amended. The bill dealt with the issuance of licenses to carry concealed weapons. Your question is whether this bill, now codified at Idaho Code § 18-3302 is constitutional.

CONCLUSION:

Idaho Code § 18-3302 is unconstitutional because it will force a person of common intelligence to guess as to whether or not he or she will be in violation of the law. Further, it is unconstitutional because it does not provide proper standards for the persons charged with applying the statute, in some cases forcing them to guess at its meaning, and in other cases granting them unfettered discretion as to its implementation. Where possible, in an effort to answer concerns raised regarding interpretation of the statute, an opinion will be rendered as to those portions of the law capable of being analyzed legally.

ANALYSIS:

I. The statutory scheme

Idaho Code § 18-3302, effective July 1, 1990, purports to regulate the carrying of concealed weapons. The statute sets forth a licensing scheme which is to be implemented by Idaho's county sheriffs. Assuming that a person meets the requirements of the law, a sheriff must issue a license to that person within sixty days of application. Failure to do so will subject the sheriff to injunctive relief, costs and attorneys fees. No adequate scheme is set forth for modification or revocation of the concealed weapons license.

The license issued by a sheriff will be effective throughout Idaho. No standards have been set forth for the regulation of the licenses themselves. The licenses are not limited to the carrying of firearms. Any and all deadly weapons may be concealed upon licensure, except for rifles and shotguns. The statute does not limit the class, type or number of such weapons that may be carried.

A series of exceptions are set forth that allow a sheriff to deny a "citizen's constitutional right to bear arms." The statute also exempts certain classes of persons from the application of the licensing process. Any person found guilty of carrying a concealed weapon in violation of the statute will be guilty of a misdemeanor.

II. Constitutional Law and Concealed Weapons

There is nothing in the United States or Idaho constitutions that grants a person a constitutional right to carry a concealed weapon. Indeed, art. 1, § 11, of the Idaho Constitution specifically empowers the legislature to pass "laws to govern the carrying of weapons concealed on the person...." On the federal level, the United States Supreme Court has stated that concealed weapons may be regulated without violating the second amendment. *Robertson v. Baldwin*, 165 U.S. 275, 17 S.Ct. 326, 41 L.Ed. 715 (1897).

Hence, the language in Idaho Code § 18-3302(1) implying that one has a constitutional right to carry concealed weapons is without foundation in the context it is used.

III. Vagueness

The United States and Idaho Supreme Courts have both held that criminal and non-criminal statutes will be unconstitutional under the due process clause where the language used in the statute does not convey sufficiently definite warning as to proscribed conduct. In other words, where persons of common intelligence must necessarily guess at its meaning, a statute will be void for vagueness. *Keyishian v. Board of Regents*, 385 U.S. 589, 87 S.Ct. 675, 17 L.Ed.2d 629 (1967); *H & V Engineering v. Board of Professional Engineers*, 113 Idaho 646, 747 P.2d 55 (1987).

> The requirement that government articulate its aims with a reasonable degree of clarity ensures that state power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values, reduces the danger of caprice and discrimination in the administration of the laws, enables individuals to conform their conduct to the requirements of law, and permits meaningful judicial review.

Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462, 479 (1984).

As recognized in *Roberts*, the doctrine is not only applicable to those persons who may face prosecution for a crime, or who may run afoul of the policies of a licensing board, but also to the persons who are charged with administering the law and its policies. Hence, it has been held that a statute is too vague when it contains no explicit standards for application so that a danger of arbitrary and capricious enforcement exists, *LDS, Inc. v. Healy*, 589 P.2d 490 (Colo. 1979), and where basic policy matters have been delegated to individuals or groups without explicit standards for those who apply them, *Tuma v. Board of Nursing*, 100 Idaho 74, 593 P.2d 711 (1979); *Saxon Coffee Shop, Inc. v. Boston Licensing Board*, 407 N.E.2d 311 (Mass. 1980). See also *Chief of Fire Dept. of Worcester v. Wibley*, 507 N.E.2d 256 (Mass. 1987), and *Wheeler v. State Board of Forestry*, 192 Cal.Rptr. 693 (Cal.App. 1983).

Where the above mentioned conditions exist, those portions of a statutory scheme that violate the doctrine will be invalidated as unconstitutional.

IV. Application of the Vagueness Doctrine to Idaho Code § 18-3302

Subsection (1) of the statute mandates a sheriff to issue a concealed weapons license to a person "for the purpose of protection or while engaged in business, sport or while traveling" (sic). No guidance is given the sheriff as to whether a different license is required for each of the various activities contemplated in the statute. More important, no standards are set forth to guide the sheriff in the crucial decision as to when to issue a license in a particular case. Nothing is stated as to the quantum of proof a sheriff may require a person to produce to show a need for such a permit for protection, business or sport activities. The sheriffs are left to decide for themselves on a case by case, county by county basis, whether or not to grant a license.

The issue of proof of need for personal protection has proved to be difficult in some states. However, many of these states have articulated standards for licensing agencies to go by. For example, the District of Columbia adopted a policy requiring a showing of threats of death or bodily injury and an investigation by the chief of police as to whether the allegations are factual and of a nature that can by protected against by carrying a pistol. See *Jordan v. District of Columbia*, 362 A.2d 114 (D.C.App. 1976). Maryland requires an investigation to determine whether carrying a weapon is necessary as a reasonable precaution against apprehended danger. It has been held in that state that the issue of apprehended danger is not to be viewed from a subjective standpoint. *Snowden v. Handgun Permit Review Board*, 413 A.2d 295 (Md.App. 1980). Pennsylvania also requires a demonstration of need. See *Gardner v. Jenkins*, 541 A.2d 406 (Pa.Cmwlth. 1988).

Conversely, the Idaho citizen and the county sheriff are left in the dark about whether the legislature contemplated similar requirements. Therefore, it is entirely likely that licenses will or will not be issued based upon the vagaries of individual circumstances and whims of individual sheriffs.

Similarly, it is unclear what the legislature meant by the terms "sport" and "travel." Both the citizen and the sheriff are forced to guess at whether the sport in question is limited to those involving the use of weapons, and whether active participation is required, or whether simple attendance at a spectator sporting event will entitle a person to carry a concealed weapon. As to "travel," it is unknown whether this

term contemplates leaving one's hometown, or includes a trip to the grocery store. Again, whether a license will be issued or whether a citizen will be prosecuted will be left to subjective understandings of sheriffs and prosecutors.

Subsection (1) next states that a sheriff may hold up a license application for ninety days if a person does not have a driver's license, a state identification card, or has not been a resident for the ninety day period prior to the application date. After the ninety day waiting period, the license must issue. A close reading of this portion of the statute leads one to the conclusion that Idaho residency is not required for eligibility for a license. If the legislature intended that licenses issue only to Idaho residents, it has not clearly achieved that goal by the wording of this section.

Similarly, there is no guidance within the statute as to whether a person who wishes to apply for a license must do so within his home county. Without such guidance, it appears that a person who is denied a license by his county sheriff may try again at another sheriff's office. The Washington Attorney General has interpreted similar language in that state's firearms law in such a manner. See Op.Att.Gen. 1983, No. 21. Assuming that the sheriff of the second county grants the license, it will be valid in the person's home county as well. If the legislature intended to keep this "forum shopping" from occurring, it has not achieved that goal either.

Subsection (1) then lists thirteen further subsections [(a)-(m)] where a person's "constitutional right to bear arms" may be denied. [See Part I of this opinion]. Although this language actually grants to some unnamed public entity the power to deny the right to carry a weapon under any and all circumstances as to persons meeting the criteria of one of the subsections, it is likely that the true legislative intent is that a concealed weapons permit will be denied by the sheriff only if one of the thirteen categories apply. In construing a statute, the whole act must be looked at in order to determine intent. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946).

Subsection (1)(c) states that a license may be denied when the applicant has been convicted of a crime with a penalty exceeding one year. This will exclude those persons who have had a withheld judgment for such a crime. No mention is made of the effect of the restoration of one's civil rights under Idaho Code § 19-2604, after one is discharged from probation or parole. However, as stated above, the ability to carry a concealed weapon

is not a right, but a matter of grace. Therefore, it appears that the legislature intended (despite its confusing use of the phrase "right to bear arms") that anyone who has ever been convicted of such a crime will not be eligible to receive a license. This is the analysis adopted by the federal courts in the interpretation of similar language of the federal law pertaining to sales of firearms. *Cody v. United States*, 460 F.2d 34, (8th Cir. 1972), cert. den. 409 U.S. 1010; *Decker v. Gibson Products Co.*, 679 F.2d 212 (11th Cir. 1982). See also Washington Op.Atty.Gen. 1988, No. 10.

Subsection (1)(e) allows a sheriff to deny a license where one is an "unlawful user" of a controlled substance. The county sheriffs are given no standards to determine when a person is or is not such a user. It is unknown whether a conviction is necessary, as opposed to confidential intelligence, reputation, associations etc. It is also unclear when the stigma of being an unlawful user ends. Whether such a status ends after one week, one month, or one year, or after probation or parole, is left to the policies of forty-four individual sheriffs.

Subsection (1)(f) states that a person will be denied a license when he has "been adjudicated mentally defective or has been committed to a mental institution." It is unclear what the legislature intended by using this phrase. First, there is no method to adjudicate someone mentally defective in Idaho law and, in any event, being mentally defective is not the same as being mentally ill. Rather, it is the state of being feeble-minded or slow witted. *United States v. Hansel*, 474 F.2d 1120 (8th Cir. 1973). However, the statute is not limited to Idaho. If there are any courts in the United States that make such determinations, then a person so found will not be capable of legally obtaining a license. The rest of the phrase presents a more perplexing issue. What is a mental institution, and what is required to be considered to have been "committed?" Again, the statute does not resolve the question whether the stigma of being so adjudicated or committed ever ends.

A federal court interpreting identical language in the Federal Firearms Act found that a formal court proceeding was necessary in order for a person to be considered "committed." *United States v. Giardina*, 861 F.2d 1334 (5th Cir. 1988). At the same time, the Idaho Code refers to voluntary patients as having been "admitted," while involuntary patients are referred to as "committed." Idaho Code §§ 66-317(b) and (c). Therefore, it appears that the legislature intended to require a formal commitment by a court. As to the meaning of the term "mental

institution," it appears likely the legislature intended the term to be the same as "facility" as defined in Idaho Code § 66-317(g): a public or private institution equipped to hold, evaluate, rehabilitate, or provide care for the mentally ill.

Subsection (1)(h) states that a license may be denied where a person has been prosecuted for a misdemeanor "crime of violence" within three years of the application. The term "violence" has been defined as strength or energy actively displayed or exerted, vehement or forcible action, or an unjust exercise of force. *State v. Riley*, 83 Idaho 346, 362 P.2d 1075 (1961). While such misdemeanors as assault and battery clearly meet this definition, it is entirely unclear whether the legislature intended to include such crimes as resisting arrest, Idaho Code § 18-705, disturbing the peace (which includes such acts as quarreling and fighting), Idaho Code § 18-6409, false imprisonment, Idaho Code § 18-2901, discharge of an aimed firearm, Idaho Code § 18-3305, injuring another by the careless use of a firearm, Idaho Code §§ 18-3312 and 18-3306, riotous conduct near an election place, Idaho Code § 18-2313, negligent vehicular manslaughter, Idaho Code § 18-4006(3)(c), or any other "non-property crime" misdemeanor.

The Washington firearms statutes include the term "crime of violence." Idaho's statute appears to be partially based on these laws. However, Washington law explicitly defines what crimes fall within the category of "violent." RCW 9.41.040. Idaho has no similar provision. Again, normally intelligent people are forced to guess at the law's application and sheriffs are left to create subjective policies on their own initiative.

Subsections (1)(i) and (m) deal with persons who are facing trial or who have received a withheld judgment "for a crime which would disqualify him from owning, possessing or receiving a firearm." Such persons may be denied a permit. No Idaho statute on its face would so disqualify a person, nor does any federal statute. However, 18 USC § 922 states that persons who are charged with or convicted of a crime exceeding one year imprisonment may be charged with a federal crime if they are found to ship, transport or receive a firearm which has been involved in interstate commerce or foreign commerce. Therefore, in a technical sense, they are "disqualified" from possessing any firearm not entirely indigenous to Idaho. However, this disability does not exist for those given a withheld judgment, because such a judgment is not a conviction under Idaho law and 18 USC § 921(a)(20) states that state law will be looked to as to the definition of the term "conviction."

Putting subsections (c), (i) and (m) together, the following can be said with some degree of certainty. If a person is convicted of a felony (a crime carrying a penalty in excess of one year), he will not be entitled to a license at any time in the future. If a person receives a withheld judgment for a felony, he may still obtain a license because no Idaho or federal law disqualifies him from owning a firearm. If a person is merely charged with a felony, he is not entitled to a license until he is acquitted or is granted a withheld judgment.

After subparts (a)-(m), subsection (1) states that a license shall be revoked immediately upon conviction "for a crime which makes the person ineligible to own, possess or receive a firearm or upon a conviction for a violation of this section." As stated above, only conviction of a felony will so disqualify such a person. A conviction for violation of "this section" appears to mean a conviction for carrying a concealed weapon without a license. The only other mention of revocation in the entire statute is a passing reference to previous licenses having been "revoked for cause" in subsection (13)(f). No standards are set forth as to who may revoke the license, and no method is set up for keeping track of the status of the licenses.

Even though no one has a constitutional right to carry a concealed weapon, the state legislature has created a statutory right to do so, assuming one is able to convince a sheriff to issue a license. Once such a liberty interest is created, it may not be taken away without due process of law.

> This analysis as to liberty parallels the accepted due process analysis as to property. The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests.

Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935, 952 (1974).

Such procedural due process principles have been held to apply to the revocation of licenses. *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed. 2d 117 (1968). The fact that a conviction is a predicate for such a revocation is of no significance. Even though an agency may immediately revoke a license in such a case, the licensee still must have the right to request a post-revocation hearing to test the propriety of the revocation. *Dixon v. Love*, 431 U.S. 105, 97 S.Ct 1723, 52 L.Ed.2d

172 (1977). Therefore, notice and an opportunity to be heard must be given before the final revocation of the concealed weapons license. Yet, none is provided for in the statute.

While it can be argued that notice and a hearing can be "read into" the statute by implication in order to make it constitutional, it remains unclear who is supposed to give the notice and afford the hearing. It is not known whether it is the issuing sheriff, the sheriff of the licensee's home county, any other sheriff, or anyone else for that matter. Nothing is stated as to what must be done to ensure that the licensee does not circumvent the revocation provision by immediately obtaining a new license from a different sheriff.

Finally, the meaning of the portion of the statute pertaining to when a person becomes "disqualified" to own a firearm is subject to varied interpretation, depending upon a close review of the federal laws. This could lead various sheriffs to varying interpretations, resulting in unequal application of what little standards exist as to revocation. The penalty of revocation cannot be imposed for violations of a standard whose meaning is dependent on surmise or conjecture or uncontrolled application by the administrator imposing the penalty. *LDS, Inc. v. Healy, supra*.

Because of the lack of standards to ensure procedural due process, the lack of guidelines for anyone attempting to revoke a license, and the lack of a system to make the revocation effective, this portion of the statute is unconstitutionally vague and in violation of procedural due process principles.

Similarly, the portion of the statute alluding to revocation for cause is a nullity. No standards for revocation for cause are given. It is unknown whether the legislature intended revocation to occur when a license is obtained by fraud, where a license is misused, or when an event occurs which would have allowed the sheriff to deny the application in the first place. Because none of these matters is addressed, no revocation for cause may occur. A license may only be revoked for specific reasons enumerated in the statute, and an agency or board may not create new reasons, no matter how logical or reasonable. *Atlanta Attractions, Inc. v. Massell*, 463 F.2d 449 (5th Cir. 1972).

Subsection (5) allows a sheriff to issue a temporary emergency license for "good cause pending review under subsection (1)." No guidelines are given as to what would constitute good cause. Again, this subsection lends itself to widely divergent

applications based upon the subjective analysis of those charged with applying the statute. Although some discretion is necessary in applying licensing statutes, where the discretion becomes so boundless as to virtually assure capricious application, the statutory scheme cannot stand. *Tuma v. Board of Nursing, supra.*

This same logic applies to subsection (11), which allows a sheriff to issue a permit to persons between the ages of eighteen and twenty one dependent upon the "judgment" of the sheriff. Apparently, a sheriff may grant such a license whenever he decides it is warranted on his own, and without any guidelines from the legislature.

Legislation that contains language so loose as to leave overly wide discretion encourages erratic administration, turns individual impressions into the yardstick of action, and bases regulation upon the beliefs of the individual administrator rather than law. Further, judicial review is rendered inoperative. *Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 225, 88 S.Ct. 1298, 20 L.Ed.2d 225 (1968). For these reasons, subsections (5) and (11) are unconstitutionally vague.

Subsection (7) states that one may not carry a concealed weapon without a license except at home or at one's "fixed place of business." It then defines the term "concealed weapon" to include pistols or knives and "any other deadly or dangerous weapon." This apparently would include caustic chemicals, explosives, or anything else that could cause harm. However, the law goes on to state that "[t]he provisions of this section shall not apply to any shotgun or rifle." This proviso can be interpreted in two contradictory and mutually exclusive ways. The first is that a rifle or shotgun (including a sawed off shotgun) is not a concealed weapon and the entire statute does not apply to those forms of weapons; and therefore a person may conceal such weapons on his person or in his vehicle without a license. The second way is that a license may never be granted for the carrying of a concealed rifle or shotgun; therefore anyone so concealing such a weapon will be guilty of a misdemeanor under subsection (14). It is completely unclear which of the two interpretations the legislature intended.

This, again, leaves the sheriff and prosecutor with individual impressions as a yardstick in the decision to arrest and prosecute a person. Again, a citizen is forced to guess as to the law's application, and when he does so guess, it may not be the same guess the sheriff makes. Hence, a citizen may seek to obtain a license in one county and be told that one is not

required. He may then be arrested in another county by a sheriff taking an opposite view of the law. Subsection (7), as it applies to rifles and shotguns, is unconstitutionally vague.

Subsection (12)(b) exempts "employees of the adjutant general and military division of the state where military membership is a condition of employment" from the application of the statute. The question has been raised as to whether this language can be applied to such persons when they are off duty. In order to find that the exemption only applies to on-duty personnel, one would have to read language into the statute that is not there. Because the exemption is clear on its face, such an approach would be improper. Where language of a statute is clear, there is no occasion for application of principles of construction. *State v. Nab*, 112 Idaho 1139, 739 P.2d 438 (Ct.App. 1987). The only proper answer (though not necessarily the logical one) is that all employees are exempted, irrespective of whether they are on or off duty.

Subsection (12)(d) states that the following persons are exempt from the licensing scheme:

> Any person outside the limits of or confines of any city, or outside any mining, lumbering, logging or railroad camp, located outside any city, while engaged in lawful hunting, fishing, trapping or other lawful outdoor activity that involves the carrying of a weapon for personal protection.

This subpart must be read in conjunction with subsection (9), which states that no one may carry a concealed weapon without a license when in a motor vehicle. Hence, it appears that anyone who is not in a car or truck, who is outdoors, and not within city limits or one of the camps referred to, who is not hunting or fishing or trapping, must obtain a license unless they are engaged in a lawful "activity that involves carrying a weapon for personal protection." What this phrase means is not addressed by the legislature.

There are obviously innumerable activities that can be accomplished outdoors, without a car, outside a city: hiking, boating, farming, horseback riding, skiing, bicycling, gardening, camping - the list is endless. Clearly, the legislature did not intend the exemption to apply to every activity that can be accomplished outside the limits of a city or above referenced camp. Considering the relative difference in acreage in Idaho between land outside and inside city limits, such an

interpretation would virtually nullify the very purpose of the statute - the statewide regulation of concealed weapons. The persons residing in unincorporated areas of the state number in the tens of thousands. A statute will not be interpreted by a court in such a way that an absurd result ensues, if possible. *Gavica v. Hanson*, 101 Idaho 58, 608 P.2d 861 (1980).

If this is true, then what can be inferred from the phrase: "activity that involves the carrying of a weapon for personal protection?" Is transporting something of value such an activity? Who decides when a particular activity will meet this test?

Yet again, a person is left to shift for himself in deciding whether his actions will be exempt from or in violation of the law. Prosecutors and police will have to guess when the law has been broken, and persons will be subject to criminal prosecution unequally and arbitrarily. Yet again, this portion of the statute is unconstitutionally vague. *H & V Engineering v. Board of Professional Engineers, supra*.

The legislature, in passing Idaho Code § 18-3302 has set up a regulatory maze using terms often lacking in objective measurement. In some cases, the subsections are extraordinarily ambiguous. In others, the vagueness is aggravated by the need to cross-reference with unidentified state and federal statutes pertaining to ownership of firearms, restoration of civil rights, mental health, fugitives, illegal aliens, military affairs etc. At the same time, the statute punishes sheriffs if they make an error in denying a license by mandating that the sheriff pay for costs and attorney fees when an injunctive action against him is successful. Idaho Code § 18-3302(6).

A statute that forbids or requires the doing of an act in terms so vague that persons must necessarily differ as to its application "violates the first essential of due process of law." *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 (1922). In the final analysis, the statute produces this result in such areas as who may apply for a license, who may be denied a license, who is exempt from licensure, how a license may be revoked, and whether a license may be revoked. When these vague portions of the statute are severed from the rest, what remains is a meaningless series of exceptions and subparts having no independent value.

For these reasons, it is the opinion of the Attorney General that Idaho Code § 18-3302 is unconstitutional in its entirety.

AUTHORITIES CONSIDERED:

1. *Constitutions*

Idaho Constitution, art. 1, § 11.

2. *Federal Statutes*

18 U.S.C. § 921(a)(20).
18 U.S.C. § 922.

3. *State Statutes*

Idaho Code § 18-705.
Idaho Code § 18-2313.
Idaho Code § 18-2901.
Idaho Code § 18-3302.
Idaho Code § 18-3305.
Idaho Code § 18-3306.
Idaho Code § 18-3312.
Idaho Code § 18-4006.
Idaho Code § 18-6409.
Idaho Code § 19-2604.
Idaho Code § 66-317.

4. *Cases*

Atlanta Attractions, Inc. v. Massell, 463 F.2d 449 (5th Cir. 1972).

Chief of Fire Department of Worcester v. Wibley, 507 N.E.2d 256 (Mass. 1987).

Cody v. United States, 460 F.2d 34 (8th Cir. 1972), cert. den., 409 U.S. 1010.

Connally v. General Construction Co., 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1922).

Decker v. Gibson Products Co., 679 F.2d 212 (11th Cir. 1982).

Dixon v. Love, 431 U.S. 105, 97 S. Ct. 1723, 52 L. Ed. 2d 172 (1977).

Gardner v. Jenkins, 541 A.2d 406 (Pa.Cmwlth. 1988).

Gavica v. Hanson, 101 Idaho 58, 608 P.2d 861 (1980).

H & V Engineering v. Board of Professional Engineers, 113 Idaho 646, 747 P.2d 55 (1987).

Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 225, 88 S. Ct. 1298, 20 L. Ed. 2d 225 (1968).

Jordan v. District of Columbia, 362 A.2d 114 (D.C.App. 1976).

Keyishian v. Board of Regents, 385 U.S. 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967).

LDS, Inc. v. Healy, 589 P.2d 490 (Colo. 1979).

Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462, 479 (1984).

Robertson v. Baldwin, 165 U.S. 275, 17 S. Ct. 326, 41 L. Ed. 715 (1897).

In re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968).

Saxon Coffee Shop, Inc. v. Boston Licensing Board, 407 N.E.2d 311 (Mass. 1980).

Snowden v. Handgun Permit Review Board, 413 A.2d 295 (Md.App. 1980).

State v. Groseclose, 67 Idaho 71, 171 P.2d 863 (1946).

State v. Nab, 112 Idaho 1139, 739 P.2d 438 (Ct.App. 1987).

State v. Riley, 83 Idaho 346, 362 P.2d 1075 (1961).

Tuma v. Board of Nursing, 100 Idaho 74, 593 P.2d 711 (1979).

United States v. Giardina, 861 F.2d 1334 (5th Cir. 1988).

United States v. Hansel, 474 F.2d 1120 (8th Cir. 1973).

Wheeler v. State Board of Forestry, 192 Cal. Rptr. 693 (Cal.App. 1983).

Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935, 952 (1974).

5. *Other*

RCW 9.41.040.
Washington Op. Atty. Gen. 1988, No. 10.
Washington Op. Atty. Gen. 1983, No. 21.

DATED this 12th day of June, 1990.

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