



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
RAÚL R. LABRADOR

ATTORNEY GENERAL OPINION NO. 23-03

TO: The Honorable Phil McGrane
Idaho Secretary of State
700 W. Jefferson Street, E205
Boise, Idaho 83702

Per Request for Attorney General's Opinion.

You requested an opinion from the Attorney General on whether Idaho law allows caucuses to be held in public facilities. This opinion addresses the question you have presented.

QUESTIONS PRESENTED

1. Whether public facilities (i.e., state meeting rooms, city halls, schools, etc.) can be used by the political parties to conduct caucuses for the nomination of presidential candidates?

ANALYSIS

The Public Integrity in Elections Act generally disallows public funds, resources, or property to be used to advocate for candidates or ballot measures. However, there is an exemption that seems to allow political parties to run caucuses at public facilities so long as all political parties are given "equal and fair access" to the public facility. The applicable language of this Act is referenced below:

(5) "Property or resources" means goods, services, equipment, computer software and hardware, college extra credit, other items of intangible property, or facilities provided to or for the benefit of a candidate, a candidate's personal campaign committee, a political

issues committee for political purposes, or advocacy for or against a ballot measure or candidate. *Public property or resources that are available to the general public, at such times and in such manner as they are available to the general public, are exempt from this exclusion and may be used by a political party as defined in section [34-109](#), Idaho Code, provided that all political parties are given equal and fair access.*

Idaho Code § 74-603(5) (emphasis added).

The clear language of the statute indicates that political parties can use “[p]ublic property or resources that are available to the public.” The only limiting language in the Act clarifies that the public property and resources must be used “at such time and in such manner as they are available to the general public”.

The statute does not define the phrase, “at such time and in such manner as they are available to the general public.” Fortunately, the legislative meeting minutes pertaining to HB 566, which was eventually codified as Idaho Code sections 74-601 to 74-606, shed additional light on this language. For example:

Rep. Monks presented **H 566** which would allow equitable use of public areas for all recognized political parties wanting to have an event *that is in accordance with the function of the location*. These events have taken place on occasion as it was assumed they were allowed to do so but it would be prudent to get permissions in writing.

House State Affairs Committee meeting minutes, February 11, 2022, p.3 (emphasis added).

Senator Stennett asked if the bill would distinguish between general public areas and private properties with meeting rooms. **Representative Monks** responded that the bill applied only to publicly owned properties. He said the *bill would only apply to areas where one had to request authorization for the use, such as a meeting room*. He clarified that a space would not have to be always open to be considered generally available to the public, as long as it was open fairly to all parties.

Senate State Affairs Committee meeting minutes, February 11, 2022, p.3 (emphasis added).

Based on the comments captured in these legislative minutes, it appears that the legislature intended to allow access to political parties to utilize public facilities

at a time when such facilities were open to the general public and in accordance with the function of the location.

While schools are open to enrolled students and educators during school hours, they are not generally open to the public at large. Thus, a school would not be available for political party use during regular school hours. If the school facility is open to the general public after hours and/or the weekend, however, political parties should be granted permission to use the facility. The school would also have to allow equal and fair access to any other political party wanting to use its facilities.

CONCLUSION

The clear language of the Public Integrity in Elections Act generally disallows the use of public funds, resources, or property for the advocacy of candidates or ballot measures. However, it allows political parties to hold caucuses at public facilities so long as all political parties are given "equal and fair access" to the public facility.

AUTHORITIES CONSIDERED

1. Idaho Code:

§ 34-109
§ 74-601, et seq.
§ 74-603(5)

Dated this 15th day of September, 2023.



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