



STATE OF IDAHO

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ATTORNEY GENERAL OPINION NO. 87-1

Richard L. Harris, Esq.  
Canyon County Prosecutor  
P. O. Box 668  
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Request for Attorney General's Opinion

RE: Certification of Peace Officers in Idaho

Dear Mr. Harris:

QUESTION PRESENTED

On behalf of the Canyon County Commissioners, you have asked for legal guidance regarding the meaning and implementation of Idaho Code § 19-5109(b) relating to certification of peace officers in the state of Idaho.

CONCLUSION

It is our conclusion that the individual "officer," the law enforcement agency that employs him and the political subdivision of the state where the agency functions may all encounter grave consequences by ignoring the certification statute where such employee continues to carry out peace officer duties without the statutorily required training and certification. The officer may incur criminal liability; the cases the officer takes to court may be dismissed or the officer's evidence excluded; the public officials of the political subdivision that authorizes payment of

his salary may be guilty of a constitutionally defined felony; and the individual, the agency, and the political subdivision may incur civil liability to persons upon whom such an employee exercises power given only to duly qualified and appointed peace officers.

#### ANALYSIS

Your letter refers to a situation in the sheriff's office where a sworn full-time deputy exercising all of the powers of a peace officer for prevention and detection of crime continues to serve in such capacity for more than one year after such employment without ever becoming trained and certified pursuant to Idaho Code § 19-5109(b).

The policy of our legislature is clear that there shall not be 44 different standards of competence for peace officers throughout Idaho counties but a uniform standard to be set by the law enforcement professionals who comprise the council for Peace Officer Standards and Training (hereafter "POST"). No individual sheriff or county, police chief or city shall set the standards or qualifications for peace officers; but these are entrusted to POST Council.

Title 19, ch. 51, Idaho Code, establishes POST Council and prescribes its duties, powers, and composition. The law requires certification by POST of all persons who carry out the function of peace officer, such certification to be completed within one year of employment by a law enforcement agency as a peace officer.

The requirements of certification apply to all persons who are full-time employees of a police or law enforcement agency that is a part of or administered by the state or any political subdivision. Idaho Code § 19-5101(d). A law enforcement agency means an agency whose activities pertain to crime prevention or reduction and includes police, courts, prosecution, corrections, rehabilitation, and juvenile delinquency. Idaho Code § 19-5101(c). Certification is required of all whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic, or highway laws of this state or any political subdivision.

The intent of the legislature is clear from the wording of the law. There are no ambiguities and the exceptions to

certification are narrow and clearly defined in Idaho Code § 19-5109(a):

It shall be the duty of and the council shall have the power:

(1) To establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers, and the time within which such basic training must be completed.

(2) To establish the requirements of minimum education and training standards for employment as peace officers in probationary, temporary, part-time, and/or emergency positions.

(3) To establish the length of time a peace officer may serve in a probationary, temporary, and/or emergency position.

...

(7) To certify peace officers as having completed all requirements established by the council in order to be eligible for permanent employment as peace officers in this state. (Emphasis added)

It is clear that the legislature has given broad authority to POST to supervise the training and standards of peace officers throughout the state. The legislative grant of authority cannot be viewed as a hollow commission. The language of the statute giving power to POST is mandatory not precatory; it is an effective grant of power to POST Council to establish, supervise and enforce standards for peace officers throughout the state.

Likewise, the legislature has clearly mandated that in order for a person to have peace officer status and power, that person must comply with the standards and training which ch. 51, title 19, Idaho Code, places under the auspices of POST Council:

After January 1, 1974, any peace officer as defined in § 19-5101(d), Idaho Code,

employed after January 1, 1974, except any elected official, any city police chief, the superintendent of the Idaho State Police, and those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, shall be certified by the Council within one (1) year of employment. (Emphasis supplied).

Idaho Code § 19-5109(b).

While the statute is silent as to who has the responsibility to enforce certification, the remainder of our analysis will set forth several ways in which it can be enforced, and will also describe the untoward consequences that may flow from ignoring the statute.

In the first instance, it is apparent that POST Council itself would have standing to seek compulsory process against an uncertified "officer," or against a sheriff or county which hires such an individual. A writ of prohibition may lie to arrest the actions and proceedings of a sheriff and an uncertified deputy "where such proceedings are without ... the jurisdiction of the ... person." Idaho Code § 7-401. Conversely, a writ of mandate may also be available to insure compliance with the certification law since such an extraordinary writ may be issued "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station." Idaho Code § 7-302.

Moreover, ignoring the certification statute by refusing to fulfill the training required by POST puts the supposed peace officer in violation of criminal statutes. A person who exercises police functions without the authority of law is guilty of a criminal offense:

Every public officer or person pretending to be a public officer, who, under the pretense or color of any process or other legal authority, arrests any person or detains him against his will, or seizes or levies upon any property, or dispossesses anyone of any lands or tenements, without a regular

process or other lawful authority therefor,  
is guilty of a misdemeanor.

Idaho Code § 18-703.

A sheriff and his uncertified deputy and other county officers must also consider the consequences of Idaho Code § 18-711 entitled "Unlawful exercise of functions of peace officers." This section makes it a felony offense for any person in this state to "unlawfully exercise or attempt to exercise the functions of ... a deputy sheriff." A person who does not become certified by POST within one year of becoming employed by a sheriff as a peace officer is exercising the functions of a deputy sheriff unlawfully. Idaho Code § 19-5109(b). Any sheriff who retains an uncertified deputy may also be a party to the violation of the law and may be prosecuted. Idaho Code § 18-204.

On another plane, a law enforcement agency hiring an uncertified deputy may find that in processing certain criminal cases the doors of the criminal justice system are closed. It is well established that courts have by judicial implication inherent power to exclude evidence obtained in violation of law. Weeks v. U.S., 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914); Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 108 (1961). Courts have found it appropriate in contexts analogous to the present to exclude evidence where admission of the evidence would put the court in the unseemly position of acquiescing in unlawful conduct.

A court of record of this state could, therefore, refuse to accept the work product or testimony of a person who is not certified as required by the statute. It has come to our attention that some courts of our state have disallowed and suppressed the testimony of a person claiming to be a peace officer but who had not been certified as required by statute. Likewise, it has come to our attention that courts in our state have dismissed criminal complaints filed by persons who represented themselves to be peace officers, but who were not in compliance with the certification statute. Courts within your jurisdiction could employ similar procedures.

In like manner, the prosecuting attorney could properly refuse to proceed with cases in which an uncertified officer figures as an indispensable part of the presentation of the

state's case. Pursuant to his broadly accorded prosecutorial discretion (see, Idaho Attorney General Opinion No. 81-7 and 1983 legal guideline of the Attorney General's Office, p. 168), a motion for dismissal would be a fitting, albeit unfortunate, sanction to shield the prosecutor from confederacy in this type of recalcitrance.

The Board of County Commissioners also has the power to require a county officer to comply with the law (see, Idaho Attorney General Opinion 86-10). The Board exercises general supervisory authority over the other county officers. Idaho Code §§ 31-801, 802, 828. The county commissioners' powers include the setting of the budget for and the acceptance of claims for expenditures by county officials. Idaho Code § 31-1605. The Idaho Constitution entrusts the county commissioners with the power to supervise the hiring of deputies by the sheriff and the power to set compensation for the sheriff's deputies. Art. XVIII, § 6, Idaho Constitution. The Constitution also prohibits use of public funds for purposes which violate the laws passed by the legislature. "The making of profit, directly or indirectly, out of state, county, city, township, or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony." Art. VII, § 10, Idaho Constitution. Under the very broad wording of this section, the county commissioners would be justified in refusing to allow a claim for payment of services of a person employed to fill a peace officer position in the sheriff's office, but who is not properly certified and empowered to act as a peace officer. Indeed, payment of such a claim would expose the Commissioners themselves to criminal liability.

In addition to the above, county officials must be vigilant to avoid the civil liability a county or a sheriff's office might incur by having a person functioning in the capacity of a peace officer who, in fact, lacks such training and authority. The potential consequences are grave under both federal code and state statute if a person who has not been properly trained and supervised is entrusted with peace officer power and abuses that power.

In conclusion, it is clear that a sheriff does not have the power to retain a deputy with full peace officer powers beyond one year of such deputy's full-time employment without the deputy becoming trained and certified by POST. Disregard of a

statute requiring certification would be unlawful in view of the deleterious consequences, civil and criminal, which may affect the individual "officer," the sheriff, the county commissioners and the residents of said county.

AUTHORITIES CONSIDERED

Art. VII, § 10, Idaho Constitution

Art. XVIII, § 6, Idaho Constitution

Idaho Code § 7-302

Idaho Code § 7-401

Idaho Code § 18-204

Idaho Code § 18-703

Idaho Code § 19-5101(d)

Idaho Code § 19-5109(a), (b)

Idaho Code §§ 31-801, 802, 828

Idaho Code § 31-1605

Title 19, ch. 51, Idaho Code

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 108 (1961)

Smylie v. Williams, 81 Idaho 335, 341 P.2d 457 (1959)

Weeks v. U.S., 232 U.S. 383, 345 S.Ct. 341, 58 L.Ed.652 (1914)

Idaho Attorney General Opinion No. 81-7

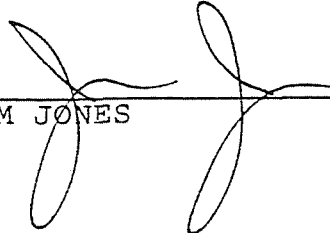
Idaho Attorney General Opinion No. 86-10

Idaho Attorney General 1983 Legal Guideline, p. 168

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DATED this 22<sup>nd</sup> day of January, 1987.

ATTORNEY GENERAL  
State of Idaho

  
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JIM JONES

ANALYSIS BY:

D. MARC HAWS  
Deputy Attorney General  
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cc: Idaho Supreme Court  
Supreme Court Library  
Idaho State Library