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*Attorneys for Plaintiffs*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER

BONNER COUNTY, a political subdivision  
of the State of Idaho, and DARYL  
WHEELER in his official capacity as the  
Elected Sheriff,

Plaintiffs,

vs.

CITY OF SANDPOINT, an Idaho  
municipal corporation,

Defendant.

Case No. CV09-19-1388

**MOTION FOR LEAVE TO AMEND  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Pursuant to I.R.C.P 15(a)(2), Plaintiffs respectfully request leave to amend the  
Complaint in the above-captioned case. Furthermore, and in accordance with I.R.C.P  
7(b)(3)(D), Plaintiffs request an oral argument on this motion, if the Defendants do not

stipulate to the amendment. Plaintiffs are waiting to get the court's available hearing dates and a notice of hearing will be filed as soon as practical.

In support of this Motion, Plaintiffs submit a proposed First Amended Complaint for Declaratory and Injunctive Relief, attached as Exhibit A. In accordance with I.R.C.P 7(b)(2) a proposed order is being filed as a separate document. This amendment comes in conjunction with the appearance of new counsel for plaintiff and after negotiations for an early resolution with Defendants have come to a standstill. The Amended Complaint adds additional facts known to the Plaintiff. It does not assert any new causes of action, and in fact, consolidates the previously pled causes of action. The amendment is being made prior to any discovery in the earliest stages of litigation.

I.R.C.P 15(a)(2) allows for the amendment of pleadings with leave of court, or with the opposing counsel's written consent, before trial. The Rule further provides that "[t]he court should freely give leave when justice so requires." *Id.* Under I.R.C.P. 15(a) "a party may amend his pleading once as a matter of course at any time before a responsive pleading is served . . . ." Where an answer has been filed, as here, I.R.C.P. 15(a) provides that "a party may amend his pleading only by leave of court . . . and leave shall be freely given when justice so requires . . . ." *Black Canyon Racquetball Club v. Idaho First Nat'l Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900 (1991). In determining whether an amended complaint should be allowed, the court may consider, whether the merits of any new claims proposed to be inserted into the action and whether the opposing party will be prejudiced by the delay in adding a new claim. *Id.* at 175.

In this case Plaintiffs', for the first time, seek leave to amend the complaint before the first status conference, before any discovery is conducted, and before any motions have

been filed by either party. The Amended Complaint does not add any new cause of action. Defendants were aware that an amended complaint was likely to be filed if ongoing negotiations between the parties failed, and therefore, there is no delay in the proceedings or prejudice to the Defendant.

For all of the above reasons, Plaintiffs respectfully request leave to amend the original Complaint in the above-captioned matter.

Respectfully submitted,

/s/ Mauricio Cardona,  
Mauricio Cardona  
A.C. Clemmons  
DAVILLIER LAW GROUP, LLC

/s/ Louis Marshall,  
Louis Marshall  
Bonner County Prosecutor

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of January, 2020, I filed the foregoing electronically through the electronic filing system, which caused the following parties or counsel to be served by electronic means:

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By: /s/ Mauricio Cardona  
Mauricio Cardona

**Exhibit A**

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF BONNER

BONNER COUNTY, a political subdivision  
of the State of Idaho, and DARYL  
WHEELER in his official capacity as the  
Elected Sheriff,

Plaintiffs,

vs.

CITY OF SANDPOINT, an Idaho  
municipal corporation,

Defendant.

Case No. CV09-19-1388

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**I. INTRODUCTION**

The primary issue presented by Bonner County, and Bonner County Sheriff Daryl

Wheeler (hereinafter collectively referred to as the “Plaintiffs”) in this declaratory action and/or request for injunctive relief is the resolution of a question of law on the interpretation of an Idaho statute and Idaho Constitution<sup>1</sup> relating to a ban of weapons occurring at a public park, War Memorial Field. The City of Sandpoint and Plaintiffs have opposing views on the law. Plaintiffs assert that a consistent and joint response to the violations of Idaho law is necessary for the safety and best interest of the public and to enable the Bonner County Sheriff to fulfill his duties and obligations under the law. The Bonner County Sheriff has knowledge that there is an escalating situation arising from a ban on guns at War Memorial Field, a public park, which is provoking an armed gun rights demonstration planned to occur in Sandpoint in order to prevent the perceived unlawful ban on guns on public property. The Bonner County Sheriff has the primary legal responsibility to enforce state statutes and respond to a known affray, and to prevent the violation of law and protect the public. Plaintiffs assert that for the safety and well-being of the public, to enforce Idaho state statutes, and to provide for a uniform response by law enforcement in response to an escalating situation, clarification of the law is necessary.

Plaintiffs allege and assert the following in support of their request for the court to enter a Declaratory Judgment and/or Injunctive Relief to prevent any violation of Constitutional and statutory rights under Idaho law and to resolve the existing dispute between law enforcement agencies.

## **II. PARTIES**

1. Plaintiff Bonner County (the “County”) is an Idaho political subdivision.
2. Sheriff Wheeler (the “Sheriff”) is the elected Sheriff of Bonner County, Idaho, and

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<sup>1</sup> The term constitution or constitutional used throughout is in reference to the Idaho State Constitution.

appears in his official capacity.

3. Defendant City of Sandpoint (the “City”) is an Idaho municipal corporation located entirely within Bonner County, Idaho.
4. The County and the City are both public entities under Idaho Code §12-117.
5. Pending intervenor The Festival at Sandpoint (the “Festival”) is an Idaho Non-Profit Corporation in good standing.<sup>2</sup>

### **III. JURISDICTION AND VENUE**

6. Plaintiffs brings this action pursuant to the Sheriff’s duties to preserve the peace and to enforce Idaho state statutes and constitutional provisions, including but not limited to, *inter alia*, the Idaho constitution Art. 1, section 1; Art. 1, section 2; Art. 1, section 10; Art. 1, section 11; Art. 1, section 13; Art. 1, section 17; Art. 1, section 18; Art. 1, section 21; Art. 2, section 1; Art. 3, section 1; Art. 3, section 19; Art. 11, section 2; Art. 11, section 7; Art. 11, section 8; Art. 12, section 2; Art. 18, section 6; I.R.C.P. 54, I.R.C.P. 57, I.R.C.P. 65, the Uniform Declaratory Judgment Act, I.C. § 10-1201 *et seq.*, I.C. § 18-3302, I.C. § 18-3302C, I.C. § 18-3302J, I.C. § 30-501, I.C. § 31-802, I.C. § 31-813, I.C. 31-2202, I.C. 31-2227, I.C. § 31-2604, I.C. 50-301, I.C. 55-101, and I.C. 67-2901(14), and as otherwise provided by Idaho law.<sup>3</sup>
7. Plaintiffs seek temporary and/or permanent declaratory judgment and/or injunctive relief against the City, and if needed, against the Festival, to preserve the peace, enforce Idaho

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<sup>2</sup> The Festival has filed an unopposed motion to intervene that as of the date of this filing has not been granted by the court.

<sup>3</sup> Plaintiffs rely solely upon Idaho law and do not seek a State Court declaration, injunction, or any other remedy regarding any federal right(s). Plaintiffs assert no federal claims of any nature whatsoever, whether constitutional or statutory. Plaintiffs assert only Idaho state law claims. Plaintiffs refer only to the Idaho Government if, and when, the legislative, executive, or judicial branches are referred to herein.

statutes, prevent an affray of which the Sheriff has knowledge, and to fulfill the Sheriff's duties as set out herein and as otherwise provided by Idaho law.

8. Venue is proper pursuant to I.C. § 10-1201 because the statutory and constitutional violations, known impending affray, and unlawful conduct occurred and will occur again in Bonner County, Idaho.

#### **IV. FACTUAL ALLEGATIONS**

##### *A. BACKGROUND*

###### 1) War Memorial Field Park

9. The City owns a public park, located in the City of Sandpoint, within Bonner County, known as War Memorial Field Park ("War Memorial Field").
10. War Memorial Field is public property under Idaho law, and Sandpoint City Code 5-2-6-1.<sup>4</sup>
11. Sandpoint City Code defines public property as "any real property, or structures thereon, which are owned or controlled by a governmental entity." War Memorial Field is public property subject to control by the City.<sup>5</sup>

###### 2) Duties of the Sheriff and County

12. The Sheriff is designated by law to have the "primary duty" to: enforce the statutes of the state, "[p]reserve the peace"; "arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense,

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<sup>4</sup> Sandpoint City Code defines public property as "[a]ny real property, or structures thereon, which are owned or controlled by a governmental entity."

<sup>5</sup> Idaho Code § 18-3309(2)(b)(i); (C. Activities: Unless specifically authorized, the following activities are prohibited in any city park: 1. Golf. 2. Snowmobiling. D. Disturbing The Peace: The following behaviors are prohibited in city parks: 1. Allowing unauthorized amplified music to disturb the peace of any park user. 2. Abusive language disturbing the peace of any park user. E. Penalty: Any person found to be in violation of this section shall be deemed to be guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100.00) for any one offense.").

unless otherwise provided by law”; “[p]revent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge”; “[c]ommand the aid of as many inhabitants of the county as he may think necessary in the execution of these duties”; oversee intake and dispatch of services relating to emergency communications; “perform such other duties as are required of him by law.”; and otherwise fulfill his duties as a Law Enforcement Officer, elected constitutional official, and as a “[p]eace officer.”

13. According to an opinion offered by the Attorney General of the State of Idaho, a copy of which is attached hereto and incorporated herein as Exhibit 1, under Idaho law the Sheriff is the primary keeper of the peace in the county, making him responsible for “conserving the public peace”, “vindicating the law”, and “preserving the rights of the government” as he is designated to represent “the sovereignty of the state and he has no superior in his county.” This includes being responsible for all costs associated with prisoners charged by city law enforcement officers with violations of state law. See Ex. 1, p. 36-37.
14. Bonner County, residents and visitors, and the people of the state of Idaho are entitled to the protection and enforcement of the law in Bonner County as carried out by the Sheriff, and this court’s declaration of the law is necessary to prevent an impending affray and disruption of the peace.
15. The Bonner County Commissioners, acting as principal of the Sheriff, and as a self-insured entity, have an interest in the pending dispute due to the public interest and potential liability. As a self-insured entity, the County pays for any legal action against it, together with any resulting liability, that may arise from the impending protest of the



Festival of which the Sheriff has knowledge.

16. Plaintiffs therefore bring this action seeking declaratory and injunctive relief and attorney's fees, witness fees and other reasonable expenses pursuant to Idaho Code §§ 10-1210, 12-117(4), 12-120(3), 12-121, 12-123 and I.R.C.P. 54, and as otherwise provided by Idaho law to keep the peace, enforce the statutory and constitutional rights of residents of the county, prevent an affray or breach of the peace which has come to the attention and knowledge of the Sheriff, and fulfill the duties of the Sheriff as provided by law.

### 3) The Festival

17. For over 20 years, the City has been leasing the public park, known as War Memorial Field, to the Festival.

18. Seating for the Festival at War Memorial Field is available on the public park grounds and in Barlow Stadium, a newly constructed, 865 seat capacity covered grandstand paid for by a one percent (1%) Sandpoint sales tax over five years.<sup>6</sup>

19. War Memorial Field "became a part of [Sandpoint's] park system in 1993." War Memorial Field "was developed by community wide participation with mostly donated funds, labor, and materials. The City, County, and user fees fund today's maintenance costs."<sup>7</sup>

20. Each year, a written lease agreement is entered to allow the Festival to use the public

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<sup>6</sup> <https://www.sandpointonline.com/news/pdfs/LocalOptionTax-MemorialGrandstand.pdf> (last accessed September 7, 2019).

<sup>7</sup>

<https://www.sandpointidaho.gov/Home/Components/FacilityDirectory/FacilityDirectory/6/69?np age=2> (last accessed September 7, 2019).

park grounds at War Memorial Field to conduct a summer series of concerts for approximately two weeks in August.

21. For decades, the Festival took place at War Memorial Field without any gun ban and without any incident.
22. Plaintiffs assert that a peaceful concert series held in compliance with state law is a benefit to the Sandpoint community and to both the City and County.

4) Implementation and Enforcement of the Gun Ban

23. Beginning in August 2018, the Festival began implementing, and the City began enforcing, a gun ban on War Memorial Field for the two-week period in August in conjunction with the concerts.
24. This gun ban has provoked a very strong and staunch response from members of the public and Second Amendment Alliance (hereinafter the “Alliance”) advocates who want Idaho law, that prohibits the ban of guns on public property, enforced.
25. The public and Alliance members have sought enforcement of the law by the Sheriff, under his statutory authority.
26. In August of 2019, Bonner County residents, including Scott Herndon and Jeff Avery (the “Residents”), were restricted from entering War Memorial Field and attending the Festival at Sandpoint by Festival employees due solely to the Residents’ lawful possession of firearms.<sup>8</sup> A video of the incident was recorded and posted online (hereinafter the “Video”).<sup>9</sup>

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<sup>8</sup> Id.

<sup>9</sup> Video available at: <https://redoubtnews.com/2019/08/gun-ban-at-festival-in-sandpoint-video/> and <https://www.youtube.com/watch?v=vUtlpU8saSs> (last accessed September 7, 2019).

27. The City Attorney and City Police Officers were at War Memorial Field and assisted in implementing and enforcing the Festival's ban of weapons on public property in August 2019 per their negotiated agreement with the Festival.
28. The Residents purchased and possessed tickets to the Festival for the show they attempted to attend located on property at War Memorial Field.
29. When the Residents attempted to enter War Memorial Field in August 2019, the Festival gate security in the presence of Mr. William Herrington, the acting City Attorney, he gave the Residents only two options: either secure the firearms in a vehicle outside of the public park property and return and enter the Festival without possessing firearms, or be escorted by Festival security to the ticket booth, receive a refund and leave.
30. The Residents repeatedly asked for the basis in law relied upon to restrict the Residents' entry into War Memorial Field during the Festival, and the Festival staff responded, consistent with the protocol promulgated by the City: "Let me get the police officers, and they can deal with it."
31. An armed and uniformed Sandpoint Police Department ("SPD") officer was summoned by Festival gate security after Festival gate security threatened to trespass the Residents solely for lawful firearms possession.
32. The SPD officer and Mr. Herrington stood in a line between the Residents and the front gate to War Memorial Field, forming a human barrier physically blocking the Residents from entering War Memorial Field during the Festival.
33. Firearms possession was and is the only element considered by Sandpoint City officers and the City Attorney in enforcing their promulgated rule denying the Residents entrance to War Memorial Field during the Festival.

5) The Conflicting Legal Positions of the Parties

34. The County approached the City to elicit its analysis of Idaho state law prohibiting a ban on guns at War Memorial Field during the Festival. The City failed to respond to the request or provide any legal authority for the gun ban at War Memorial Field.
35. The Defendant, through the City Council, the City Prosecuting Attorney and City Law Enforcement Officers, took the position that the Festival is the entity implementing the ban on guns through a contractual right transferred in a lease, and therefore, the City was not breaching the law.
36. Through their attorney, the Festival has taken the position that the Idaho statute the Sheriff is compelled to uphold and enforce is unconstitutional under the Idaho constitution.
37. Plaintiffs disagree with both the Defendant's and the Festival's position on the enforceability and law enforcement's obligations pursuant to Idaho law.
38. The City has adopted the rule that a lessee of public property may ban firearms and the City may provide police power authority to enforce the lessee's ban on firearms.
39. The County and the Sheriff have found that, under the text of the Idaho code, the City does not have the authority to regulate or implement any rules or restriction on citizens' rights to lawfully bear guns in any manner on public property through contract or otherwise.
40. The Plaintiffs assert that the City rule abdicates and abridges the people's Idaho law right to bear arms in public property in favor of lessees, and will lead to unlawful trespass complaints against people enforcing their constitutional and statutory rights. The Sheriff, as the primary law enforcement officer of the County, is not willing to lend the police

power of the state to infringe the people's rights through arrest or imprisonment.

41. Plaintiffs assert that a contract is not enforceable to the extent it violates Idaho law.
42. Plaintiffs assert that the City's position is in direct conflict with the Sheriff's duty to enforce Idaho state law.
43. Plaintiffs assert that the City, as the owner of public property, cannot transfer to the Festival a right to temporarily ban guns on public property through a lease. The City cannot transfer a right in public property that the City does not legally possess. Therefore, the City cannot avoid compliance with Idaho law by permitting or coordinating with a private party to enforce a restriction on public property that the City is expressly prohibited by law from enforcing on that property.
44. The City asserts that although the City could not restrict weapons at War Memorial Field, the Festival, as a temporary lessee of War Memorial Field for two weeks, can restrict firearms possession in the same manner and with the same authority as an owner of private property.
45. The Plaintiffs assert that the restriction of weapons by the City, as well as by any assignee or lessee of War Memorial Field, violates the clear statement of law and the intent of the legislature that guns cannot be banned from public property. Plaintiffs further assert that the possession of guns on public property can only be restricted by the legislature, voiding *ab initio* a restriction of the peoples' constitutional right to bear arms on public property through municipal contracts such as the Festival's two-week lease of War Memorial Field from the City.

***B. THE IMPENDING ARMED CONFRONTATION AND  
RESULTING HARM TO PLAINTIFFS THAT A  
DECLARATORY JUDGMENT CAN REMEDY***

46. The City has expressed that it will, in conformance with its promulgated rule, continue to support, allow, and enforce a ban on firearms at War Memorial Field. The Festival is moving ahead to hold its 2020 Festival at War Memorial Field with the enforcement of a gun ban.
47. The Sheriff is in possession of information that the restriction of the constitutional right to keep and bear arms, as proposed by the City during the 2020 Festival, will result in armed second amendment advocates assembling to occupy War Memorial Field during the 2020 Festival. Uniformity of response by all Law Enforcement Officers (City and County) is essential to maintain crowd control and prevent imminent harm. A unified response requires this honorable Court to declare the applicable law and resolve the dispute between the City and the Plaintiffs with respect to the interpretation of Idaho state law.
48. The Plaintiffs assert that the City law enforcement officials' conduct is unreasonable, arbitrary and capricious, without foundation in Idaho law, and a violation of clearly established Idaho constitutional and statutory rights.
49. If the City arrests residents for trespass based solely on the residents' exercise of their constitutional right to keep and bear arms on public park property, as enshrined under Idaho law, the Sheriff is placed in a conflict with his obligations under the law.
50. If persons were arrested by City officers, then pursuant to I.C. § 20-612, the Sheriff must receive those persons committed to jail by competent authority. Such action would result in the Sheriff's office violating the constitutional and statutory rights of the residents, further inflaming tensions during the expected standoff with armed citizens protesting

the perceived violation of their constitutional right to keep and bear arms, and expose the Plaintiffs to liability.

51. The County, through counsel, transmitted a letter to the City's counsel on August 22, 2019 requesting the City to identify any authority in support of the City's enforcement of a ban on firearms at War Memorial Field.
52. The City did not respond to the County's request or provide any authority for the ban of weapons at War Memorial Field.
53. The City has expressed the plan and intent to indefinitely continue and enforce the practice of prohibiting lawful firearms possession during the Festival at War Memorial Field.
54. The Sheriff's determination is that law enforcement officers lack the legal authority to trespass, detain, or arrest any person solely for lawful firearms possession during the Festival at War Memorial Field.
55. Plaintiffs assert that the arrest or detainment of a person by a private citizen, Bonner County Sheriff's Deputy, or SPD officer during the Festival at War Memorial Field solely for lawful firearms possession on public property is contrary to Idaho law.
56. The City may not grant by lease interests in property which the City does not possess.<sup>10</sup> Allowing such would provide municipalities free reign to avoid compliance with Idaho statutory and constitutional law.
57. The Idaho Legislature has entirely preempted the field of firearms regulation.
58. Idaho statutes prohibit the restriction of the lawful possession of firearms at War

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<sup>10</sup> I.C. 55-101; see also *Bedard & Musser v. City of Boise*, 162 Idaho 688, 690 (2017) (A well-understood legal principle is that a tenant cannot grant a greater interest in property than its own possessory interest.) Idaho Code § 30-501; see also Idaho constitution Article 11, §§ 2 and 7.

Memorial Field.

59. The Sheriff has received complaints from residents of the County relating to the deprivation of the resident's exercise of fundamental rights under the Idaho constitution and Idaho statutory rights due to the ban on firearms being enforced on War Memorial Field by City law enforcement officers.
60. The ban of firearms by the Festival on War Memorial Field is in conflict with Idaho law, has resulted in an organized protest and demonstrated response and outcry from Second Amendment Alliance members and citizens advocating for the enforcement of their rights under Idaho law.
61. The Sheriff, through media reports, information on-line, and direct reports from citizens, has been apprised that citizens and Alliance members intend to assert their right to occupy public park property while bearing arms at War Memorial Field during the Festival and protest the perceived unlawful ban of weapons on public property.
62. The current climate across the country, as frequently addressed in the media, is fraught with passionate feelings regarding restrictions on the peoples' right to bear arms. This national debate results in confrontational and conflict driven gatherings of large numbers of citizens and law enforcement officials bearing arms, creates an affray and places the public peace and safety in jeopardy.<sup>11</sup> Steps leading to a similarly volatile situation, based upon the peoples' right to bear arms as defined by Idaho law, are currently under way here in Sandpoint.

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<sup>11</sup> See Generally, <https://www.usatoday.com/story/news/nation/2020/01/20/virginia-gun-rally-protest-draws-national-militias-fear-violence/4519076002/> (last accessed January 23, 2020).  
<https://www.nbcnews.com/news/us-news/what-know-virginia-s-gun-rights-rally-n1118651> (last accessed January 23, 2020).



63. The Sheriff has received information, and is of the belief, that such an armed protest and conflict will occur at War Memorial Field in the event the 2020 Festival proceeds with a gun ban.
64. The Sheriff is placed in a Catch-22 situation in that he would be forced to take residents into custody if they are arrested by City law enforcement officers based upon his ministerial duties, despite his position that such action would be unlawful.
65. The Sheriff is compelled by statute to act to protect the public, keep the peace, and enforce Idaho state statutes.
66. The City's position that a contract can provide a means to ban firearms on public property and thereby avoid the application of Idaho state statutes is in direct conflict with the Sheriff's position regarding his statutory duties and responsibilities under the law.
67. Instead of waiting for the impending armed protest, standoff and dispute to come to fruition in a crowded public setting, the Plaintiffs are seeking preliminary action by the court in the form of declaratory relief and/or injunctive relief to: 1) avoid the current conflicting interpretation of law between the two law enforcement agencies who will be responding to the impending conflict of which the Sheriff has been made aware; 2) enforce Idaho law establishing that the Sheriff has the ultimate authority to enforce Idaho state law by preventing the City from enforcing a ban on firearms at War Memorial Field, and 3) prevent a large gathering or conflict with an armed protest that would breach the peace.
68. It is the Plaintiff's position that the Festival, and lawful use of public property, is a benefit to the community and supports the public interest. The Plaintiffs would like the Festival to continue in a lawful manner, as it peacefully existed for decades in the past.

## V. LEGAL PROVISIONS

69. Article 1, section 11 of the Idaho constitution limits the power of the state of Idaho, and any of its political subdivisions, and municipal corporations from abridging the right of the people to keep and bear arms.
70. Article 1, section 11 of the Idaho constitution grants certain limited authority to the Idaho Legislature to pass laws to govern the carrying of weapons concealed on the person.
71. Idaho Code section 18-3315B(2) provides that "[n]o federal executive order, agency order, law, statute, rule or regulation issued, enacted or promulgated on or after [March 19, 2014] shall be knowingly and willfully ordered to be enforced by any official, agent or employee of the state or a political subdivision of the state if contrary to the provisions of section 11, article I, of the constitution of the state of Idaho."
72. Section 2 of S.L. 2014, ch 148, enacting Idaho Code section 18-3315B provided in relevant part that: "It is the intent of the Legislature in enacting this act to protect Idaho law enforcement officers from being directed, through federal executive orders, agency orders, statutes, laws, rules, or regulations enacted or promulgated on or after the effective date of this act, to violate their oath of office and Idaho citizens' rights under Section 11, Article I, of the Constitution of the State of Idaho. This Idaho constitutional provision disallows confiscation of firearms ... and disallows other restrictions on a citizen's lawful right to own firearms and ammunition. This act provides that no Idaho law enforcement official shall knowingly and willingly order an action that is contrary to the provisions of Section 11, Article I, of the Constitution of the State of Idaho. ... The Legislature intends to create a penalty for an official, agent or employee of the

State of Idaho or a political subdivision thereof that orders an unlawful confiscation without penalizing officers that follow orders. Idaho law enforcement officers are partners with Idaho citizens in protecting the rights as outlined in both the United States Constitution and the Constitution of the State of Idaho."

73. The policy of the state of Idaho is that the people of Idaho have reserved for themselves the right to keep and bear arms while granting the Legislature the exclusive authority to regulate the constitutional and statutory right to carry weapons concealed, and expressly prohibiting local municipalities from restricting the right to bear arms on public property absent action by the legislature.
74. The provisions of chapter 33, title 18, Idaho Code must be strictly construed so as to give maximum scope to the rights retained by the people.<sup>12</sup>
75. The Legislature has expressly preempted the entire field of firearms regulation by enacting Idaho Code section 18-3302J<sup>13</sup> and stating that the "legislature finds that uniform laws regulating firearms are necessary to protect the individual citizen's right to bear arms guaranteed by...section 11, article I of the constitution of the state of Idaho. It is the legislature's intent to wholly occupy the field of firearms regulation within this state."
76. Idaho Code § 18-3302J(2) states, "[e]xcept as expressly authorized by state statute, no county, city, agency, board or any other political subdivision of this state may adopt or enforce any law, rule, regulation, or ordinance which regulates in any manner the sale, acquisition, transfer, ownership, possession, transportation, carrying or storage of

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<sup>12</sup> Idaho Code § 18-3302.

<sup>13</sup> 2008 Ida. SB 1441.

firearms or any element relating to firearms and components thereof, including ammunition.”

77. Idaho has long recognized the proposition that a municipal corporation, as a creature of the state, possesses and exercises only those powers either expressly or impliedly granted to it.<sup>14</sup>

78. The City cannot act in an area which, like firearms, is so completely covered by general law as to indicate that it is a matter of state concern, nor where to do so, would conflict with the state’s general laws.<sup>15</sup>

79. The City’s attempt to enforce a provision of contract law that limits or restricts the possession of firearms on public property is creating and enforcing a rule that is contrary to the plain meaning of the statutory language and the intent of the Legislature.

80. The Legislature has not expressly authorized the City to adopt or enforce a firearm ban during the Festival at War Memorial Field by contract law or any other rule of law.<sup>16</sup>

81. The Sheriff and Prosecutor of Bonner County have the primary duty of enforcing all the penal provisions of any and all statutes of this state.<sup>17</sup>

82. The Legislature has chosen to expressly preempt the entire field of firearms regulation and thereby expressly and unequivocally prohibits the City from enforcing any rule or law that restricts the possession of firearms beyond the Legislature’s express authorization to do so.<sup>18</sup>

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<sup>14</sup> See Generally, *Sandpoint Water & Light Co. v. City of Sandpoint*, 41 Idaho 498, 503

<sup>15</sup> See Generally, *Caesar v State*, 101 Idaho 158 (1980), referencing *State v. Musser*, 67 Idaho 214, 219 (1946)

<sup>16</sup> Idaho constitution Article 3, section 19.

<sup>17</sup> Idaho Code §§ 31-802, 31-2202, 31-2227, 31-2604 67-2901(14).

<sup>18</sup> Idaho Constitution Article 2, section 2; and Article 3, section 1.

## **VI. DECLARATORY AND INJUNCTIVE RELIEF**

83. The County through the Sheriff has the duty and responsibility to enforce the applicable laws within the County, and the people of this county and state have the right to have the Sheriff protect the applicable Idaho state statutory and constitutional rights and to prevent the affray and keep the peace by preventing an armed controversy and protest that is impending over the ban of weapons at War Memorial Field. The dispute of law between the City and Plaintiffs needs to be resolved prior to the impending affray for the public safety and well-being, as well as to enable both law enforcement agencies to act cooperatively, consistent with each other, and in compliance with the law. The Sheriff and his principal, the County, have no adequate remedy at law for redressing this disputed issue of law and denial of rights. Action by the court is requested to resolve the parties' differing interpretations of Idaho law in order to avoid the imminent harm that will be caused to all the parties in this case from an armed conflict occurring at a lawful public gathering on public property.

## **VII. CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

**(Finding of Law: Preemption of the Entire Field of Firearms Regulation; Idaho Code § 18-3302J, 2008 Idaho Senate Bill 1441)**

84. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

85. The Legislature preempted the entire field of firearms regulation in the state of Idaho.

86. The City is expressly prohibited from adopting or enforcing any law, rule, regulation, or ordinance which regulates in any manner the sale, acquisition, transfer, ownership, possession, transportation, carrying, or storage of firearms or any element relating to

firearms and components thereof, including ammunition.

87. To the extent that the City is enforcing a rule, protocol and/or law, including the law of contracts, that violates the express pre-emption of this field by the legislature, the court's direction is necessary to prevent the imminent harm, violation of law, and ongoing reputational harm which, absent a clear interpretation of the law by this honorable court, will culminate in a disruption of the peace during the 2020 Festival.
88. The court should permit the Sheriff, who has the primary duty to enforce the state statute and keep the peace to obtain a peaceful resolution of the dispute of a question of law at the earliest possible opportunity to prevent and avoid any further harm.

### **SECOND CLAIM FOR RELIEF**

#### **Declaratory Relief Pursuant to I.C. § 10-1201**

89. All of the foregoing allegations are repeated and realleged as if fully set forth herein.
90. The City's mistaken position under the law and coordinated acts in conjunction with a lessee run afoul of and infringe upon the statutory and constitutional rights of County residents.
91. The Sheriff has a duty and responsibility to enforce Idaho state laws.
92. The City's actions as alleged herein prohibit the defense of life during the Festival at War Memorial Field, deprive firearms possessors of liberty and property without due process of law, molest the ability to secure safety, categorically deny the equal protection and benefit of Idaho law to the class of lawful firearms possessors, and surreptitiously instigate and cooperate under color of Idaho law to unreasonably search Festival patrons.
93. This conduct interferes with the Sheriff's fulfillment and exercise of his duties and

responsibilities to enforce the law, keep the peace, prevent affrays and other legal duties and responsibilities.

94. Plaintiffs respectfully request this honorable Court pursuant to I.C. 10-1201 to resolve the dispute of law between the two law enforcement agencies and prevent the affray and ongoing violation of residents' rights.
95. A speedy remedy, conclusive decision on the dispute of law relating to fundamental rights, and administration of justice is necessary to enjoin illegal activity instrumented or enforced by municipalities in an area exclusively reserved by the legislature.
96. Such declaratory relief is necessary to prevent irreparable harm, including but not limited to putting a stop to an escalating armed dispute at a public gathering, to prevent opposing law enforcement action by two municipalities, and to prevent the violation of statutory and constitutional rights of the citizens and the resulting municipal liability that would arise out of those violations.
97. The City and Plaintiffs have a justiciable controversy relating to the fundamental and legal rights of the residents of the County and an immediate and escalating need to take enforcement and safety measures.
98. The existing dispute of law should properly be resolved by the court until such time as the legislature provides additional guidance or direction.
99. Declaratory relief is intended to provide preventative relief.
100. Declaratory relief may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered.
101. Plaintiffs seek a declaratory judgment to clarify and settle the legal relations in issue and afford relief from the uncertainty and controversy which gave rise to this

action.

102. Declaratory relief is consistent with the intent and purpose of ethics in government pursuant to I.C. 74-402.

103. If a Declaratory Judgment cannot be entered prior to the impending dispute that will occur in August 2020, Plaintiffs seek the court to grant a preliminary injunction providing direction on the dispute of law until such time as a Declaratory Judgment can be entered.

### **THIRD CLAIM FOR RELIEF**

#### **(Attorney's Fees, Costs, Witness Fees, Other Reasonable Expenses)**

104. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

105. This is a civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity. Reasonable attorney's fees, witness fees and other reasonable expenses shall be awarded to the prevailing party.

106. Plaintiffs seek attorney's fees witness fees and other reasonable expenses and costs under Idaho Code §§ 10-1210, 12-117(4), 12-120(3), 12-121, 12-123 and I.R

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court:

- A. Resolve the dispute of law that creates a justiciable controversy and rule on the power, rights, status and legal relations of the parties under I.C. 10-1201.
- B. Declare a need to have a consistent law enforcement response relating to the use of War Memorial Field and have both the City and Plaintiffs comply with Idaho state law;
- C. Declare the correct interpretation of Idaho law to resolve the dispute of law prior to



August 2020 to prevent an affray and allow the Sheriff to keep the peace and enjoy any municipal enforcement of a firearms ban during the Festival at War Memorial Field.

- D. Declare that firearms possession is a field that is entirely preempted by the Idaho Legislature, and rule on whether the City's agreeing to, promoting, and enforcing a ban on guns in any manner at War Memorial Field during the Festival is in conflict with Idaho statutes and constitutional rights;
- E. For an award of reasonable attorney's fees and costs pursuant to Idaho Code §§ 10-1210, 12-117.
- F. For such other and further relief as the Court may deem just and equitable.

DATED this 28th day of January, 2020.

Respectfully submitted,

/s/ Mauricio Cardona,  
Mauricio Cardona, Esq.  
A.C. Clemmons, Esq.  
DAVILLIER LAW GROUP, LLC

/s/ Louis Marshall,  
Louis Marshall, ISB # 6441  
Bonner County Prosecutor

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28<sup>th</sup> day of January, 2020, I filed the foregoing electronically through the electronic filing system, which caused the following parties or counsel to be served by electronic means:

Attorneys for Defendant

PETER C. ERBLAND, ISBA #2456

x I-Court Email: [perbland@lclattorneys.com](mailto:perbland@lclattorneys.com)

KATHARINE B. BRERETON, ISBA #9583 x I-Court Email: [kbrereton@lclattorneys.com](mailto:kbrereton@lclattorneys.com)  
LAKE CITY LAW GROUP PLLC  
435 W. Hanley Avenue, Suite 101  
Coeur d'Alene, ID 83815  
Telephone: (208) 664-8115  
Facsimile: (208) 664-6338

DAVILLIER LAW GROUP, LLC

By: /s/ Mauricio Cardona  
Mauricio Cardona

# Exhibit 1

Pages 35-47 of Idaho Attorney General's Report for Fiscal Year 1984, Beginning July 1, 1983 and Ending June 30, 1984 and Opinions for the Year 1984, Jim Jones, Attorney General. <https://www.ag.idaho.gov/content/uploads/2017/12/1984.pdf> (last accessed 1/28/2020)

3. Idaho cases:

*Williams v. Swensen*, 93 Idaho 542, 467 P.2d 1 (1970)

*State v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959)

*Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959)

*State v. Jonasson*, 78 Idaho 205, 299 P.2d 755 (1956)

DATED this 27th day of January, 1984.

ATTORNEY GENERAL  
STATE OF IDAHO  
JIM JONES

ANALYSIS BY:

DAVID G. HIGH  
Deputy Attorney General

C.A. DAW  
Deputy Attorney General

cc: Idaho Supreme Court  
Supreme Court Law Library  
Idaho State Library

**ATTORNEY GENERAL OPINION NO. 84-4**

TO: Mr. Thomas D. Lynch  
Valley County Prosecuting Attorney  
P.O. Box 532  
Cascade, ID 83611

Mr. Richard L. Harris  
Canyon County Prosecuting Attorney  
P.O. Box 668  
Caldwell, ID 83606

Per Request for Attorney General Opinion

QUESTION PRESENTED:

You have each asked for a formal opinion on different issues of a related subject. The subject deals with the allocation between cities and counties of the cost of extraditing

and confining prisoners who have violated state statutes. More specifically, the issues can be phrased as follows:

- (1) Who bears the cost of extraditing a prisoner charged with violation of a state statute where the violation was committed within city limits and investigated by city officers?
- (2) Who bears the cost incurred by the county jail in housing a prisoner who has been charged with a state law violation committed within city limits and investigated by city police officers; and in cases where the city bears the jail costs can a sheriff refuse to accept city prisoners until the city has paid its past due bills?

#### CONCLUSION:

Essentially, counties are responsible for the cost and enforcement of state statutes, including the cost of extraditing and housing prisoners charged by city law enforcement officers with violations of state law. And while counties may bring legal action to recoup jail costs incurred for city prisoners charged under city ordinances or state motor vehicle laws, sheriffs cannot refuse to accept city prisoners.

#### ANALYSIS:

To understand the questions presented and the answers reached, a brief historical background of the relationships between state and local levels of government is helpful. This analysis will then show in greater relief the interrelationship between state government and local law enforcement entities etched into Idaho's law. Finally, this opinion will focus on specific statutes pertaining to the extradition and housing of prisoners who have been charged by city law enforcement officers.

The State of Idaho in the third quarter of the 20th Century must not forget its origins: in doctrines of law and in systems of government Idaho is a scion of England. Common law and local government principle have, since before the Norman conquest of England in 1066, had a shared evolution; together they have survived the hazards of colonization and revolution. These durable principles have survived conditions more inimical than the economic tensions which strain the relationship between the levels of government in Idaho today.

For present purposes, it is of sufficient historical elucidation to recall that "(i)n England and all the American states, the system of ministerial officers is essentially the same that existed in the earliest ages of English jurisprudence." MURFREE, Williams, A TREATISE ON THE LAW OF SHERIFFS § 2 (2d Ed., 1890). As to that ancient system of ministerial officers, one salient point deserves emphasis: long before the rise of cities, local government consisted of counties protected by sheriffs. Even after the seeds of municipalities grew in the decay of the English feudal system, the king was sovereign and the sheriff was the keeper of his peace. The word "sheriff" derives from the saxon word "schyre," meaning county and the word "reeve" signifying keeper, administrator, or head of an array of soldiers. 1 ANDERSON ON SHERIFFS § 2; RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, (Unabridged Edition.) Not just etymologically, but literally, the modern sheriff is still the "keeper of the county."

Except for minor changes, Idaho statutes still adhere to the principle that:

[I]n the exercise of executive and administrative functions, in conserving the public peace, and vindicating the law, and in preserving the rights of the government, he (the sheriff) represents the sovereignty of the state and he has no superior in his county.

ANDERSON, *supra*, § 6.

With this historical perspective, Idaho Code § 31-2227 is significantly enhanced in meaning:

Irrespective of police powers vested by statute in state, precinct, county, and municipal officers, *it is hereby declared to be the policy of the State of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney in each of the several counties.*

Idaho Code § 31-2227 (emphasis supplied).

After the American revolt against the king, state legislatures exercised the rights and powers of sovereignty to prescribe what actions would constitute crimes against the peace and dignity of the state. *Ex Parte United States*, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed.2d 129 (1916); *State v. Webb*, 96 Idaho 325, 528 P.2d 669 (1974). When our state was formed it exercised that sovereignty and it provided, like other states, governments of general and county jurisdiction to execute its laws. Counties are subdivisions of state government which enforce state law and are self-funding. Neither the county nor the office of county sheriff has a choice as to whether or not it shall exist and act. These entities and offices are subdivisions of this state and are involuntarily created by constitution and statute. Idaho Const. art. XVIII, §§ 1-5. As for its primary law enforcement officer, the constitution commands the legislature to “provide . . . for the election of a sheriff . . . every four (4) years in each of the several counties of the state.” Idaho Const. art. XVIII, § 6.

Like his medieval counterpart in distant England, the sheriff must:

- (1) Preserve the peace.
- (2) Arrest . . . all persons who attempt to commit or who have committed a public offense . . .
- . . .
- (6) Take charge of and keep the county jail and the prisoners therein.
- . . .
- (8) Serve all process and notices in the manner prescribed by law.
- . . .
- (10) Perform such other duties as are required of him by law.

Idaho Code § 31-2202.

The sheriff is entitled to compensation and reimbursement for these services as provided by Idaho Code § 31-3302. The sheriff is not autonomous, however. His office is

under the direction of the county commissioners. One of the duties of the commissioners is to raise revenue, budget and provide the means so that other county officers, including the sheriff, are able to perform their lawful duties. In the words of the statute, the county commissioners are:

To supervise the official conduct of all county officers . . .; see that they faithfully perform their duties; (and) direct prosecution of delinquencies.

Idaho Code § 31-802.

In contrast to the genesis of county governments, the constitution provides for the voluntary incorporation of municipalities. Unlike counties, which are subdivisions of the state brought into existence by constitutional fiat, Idaho cities are born through a petition to the county commissioners as provided for by statute. Idaho Const. art. XII, § 1; Idaho Code § 50-101. Cities, voluntary corporations that they are, do not have the obligations which are the devoir of counties, to enforce and execute state criminal laws.

These cardinal differences between cities and counties are clearly underscored in the language of the Idaho Supreme Court's landmark case, *Strickfaden v. Greencreek Highway District*:

(Counties) are legal political subdivisions of the state, created or superimposed by the sovereign power of the state of its own sovereign will, without any particular solicitation or consent of the people within the territory affected. (citations omitted)

Cities, towns and villages . . . are voluntarily organized under the general law at the request and with the concurrent consent of their members.

42 Idaho 738, 748-750, 248 P.2d 456 (1926).

In their administrative functions, both county and city governments have power to establish laws not in conflict with the general laws of the state, Idaho Const. art. XII, § 2, and to enforce their ordinances by prescribing misdemeanor penalties for violations thereof, Idaho Code §§ 31-714; 50-302; *State v. Quong*, 8 Idaho 191, 67 P. 491 (1902), but felony and misdemeanor offenses of general import are described and punished by state law. It is the duty of the sheriff within his county to enforce the criminal statutes of this state. Idaho Code § 31-2202. While a sheriff indisputably exercises discretion as to how the criminal laws of this state are to be enforced in his jurisdiction, he has no choice but to enforce them or be removed from office. Idaho Code §§ 31-2202, 31-2227.

While cities have the power to appoint police officers who are accorded by statute the authority to enforce state law within their jurisdiction, there is no affirmative duty to appoint such officers nor is there a statutory responsibility for city police officers to enforce state penal statutes.

The policemen of every city, *should any be appointed*, shall have power to arrest all offenders against the law of the state, or of the city, by day or by night, in the same manner as the sheriff or constable.

Idaho Code § 50-209 (emphasis supplied).

In construing this statute on appointment of police officers, the Idaho Supreme Court has held that “(t)he appointment of police officers . . . is not mandated by statute. Indeed, Idaho Code § 59-209 . . . indicates that the decision to appoint police officers is entirely discretionary with the municipality.” *State v. Whelan*, 103 Idaho 651, 653, 651 P.2d 916 (1982).

This statutory perspective adds emphasis to the plain meaning of Idaho Code § 31-2227, the provisions of which should be restated and underscored:

*Irrespective of police powers vested by statute in state, precinct, county, and municipal officers, it is hereby declared to be the policy of the State of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney in each of the several counties.*

(Emphasis supplied).

It is indisputably clear that the sheriff has the constitutional and statutory responsibility to enforce the state laws within his county irrespective of any efforts made or omitted by the policemen of any cities within his county. The county sheriff should not view the appointment of city police officers as supplanting his authority within the county but rather as aiding him in carrying out his responsibility to see that the state’s criminal statutes are vigorously executed within his county.

On the basis of this analysis alone it stands to reason that the sheriff must bear the cost of housing within the county jail any prisoners charged with violations of the state criminal code, regardless of whether the charges arise out of offenses committed within or beyond city limits and regardless of which law enforcement agency performs the investigation and proffers the charges. Likewise, it should be clear on this authority alone that it is the county sheriff’s responsibility and cost to return to this state by extradition any prisoner who has violated a state statute and who is a fugitive from the State of Idaho, regardless of whether the criminal offense was committed within or outside of a city of the county and notwithstanding which police agency may have proffered the charges against the prisoner. However, even more specific authority compels these same conclusions and requires separate analysis.

#### COST OF EXTRADITION

To those unfamiliar with the relationship between cities and counties there is a specious appeal in the idea that a city police agency should be responsible for the costs of extraditing prisoners who have violated state law in city boundaries. However, there is no support for such a position in any of the statutes of this state, nor is it the general law of American jurisdiction. See Uniform Criminal Extradition Act § 24.<sup>1</sup>

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<sup>1</sup>When the punishment of the crimes shall be the confinement of the criminal in the penitentiary, the expenses [for extradition] shall be paid out of the state treasury, on

(Footnote continued)



Idaho adopted the Uniform Criminal Extradition Act in 1927 and appears to have been the first of 48 states to do so. It is found in Idaho Code §§ 19-4501 through 19-4534. Idaho has not, however, adopted Extradition Act § 24 on costs and expenses.

A review of three early Idaho cases dealing with the costs of agents appointed to return prisoners to this state sets out some important principles bearing upon the issues under consideration and may help explain why the legislature grafted onto the Uniform Criminal Extradition Act a section on costs and expenses different than that proposed by the drafters for the American Law Institute.

In 1868 George Settle was commissioned by contract with the governor to go to the State of Indiana for the purpose of returning fugitive John A. Andrew to Alturas County, Territory of Idaho, where he had been charged with a felony. After Mr. Settle carried out his commission, he presented a claim for his expenses but the state refused to pay. A writ of mandate issued; the question before the Idaho Supreme Court was whether or not the extradition agent was bound by a contract which he had entered into with the governor and which recited that “[I]n consideration of the sum of One Dollar (\$1.00), advanced by the governor, . . . I hereby agree to accept said agency, and proceed to the State of Indiana with said requisition, . . .” *Settle v. Sterling*, 1 Idaho 259, 262 (1869). The court held that the governor has a right to appoint an agent but that he cannot fix the agent’s costs; the position of the agent named in a requisition to receive and return a fugitive from justice is an office and such officer is entitled to the fees and emoluments set by law for his services. In its essence, the *Settle* case stands for the principle that by naming an agent to extradite a prisoner from another state, the governor obligates the resources of the State of Idaho for any expenses incurred. No statutory authority dealing with the issue of costs and expenses for extradition seems to have been in place at that early moment of Idaho’s history.

The Revised Statutes of the Territory of Idaho, promulgated in 1887, contained a section 8425 which read:

When the governor of this territory in the exercise of the authority conferred by section 2, article 4 of the constitution of the United States, or by the laws of this territory, demands from the executive authority of any state . . . the surrender to the authorities of this territory of a fugitive from justice, who has been found and arrested in such state, . . . the accounts of the person employed by him to bring back such fugitive must be audited by the controller and paid out of the territorial treasury.

This early statute made the costs of extradition a charge against state government. After this statute was passed, two similar cases arose reaffirming the principles of the *Settle*

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*(Continued from previous page)*

the certificate of the governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county where the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made and not exceeding \_\_\_\_\_ cents a mile for all necessary travel in returning such prisoner. Uniform State Laws Annotated, Uniform Criminal Extradition Act § 24.

case. In the first, *Kroutinger v. Board of Examiners*, 8 Idaho 463, 69 P. 279 (1902), the agent, under requisition of the governor, returned a fugitive to Nez Perce County from the State of Tennessee. The board of examiners rejected the agent's claim for expenses on the basis that the county should be charged. The Idaho Supreme Court, emphasizing § 8425 of the revised statutes, held that the expenses were a charge against the state rather than the County of Nez Perce. Seven years later, the Idaho Supreme Court reaffirmed the same principle and upheld the Custer County commissioners' rejection of a deputy sheriff's claim for expenses incurred in pursuing a fugitive from justice. *Roberts v. Board of Commissioners of Custer County*, 17 Idaho 379, 105 P. 797 (1909).

After Idaho became a state, it enacted, in 1917, section 9348 of the Compiled Statutes of Idaho, (which section was in all respects the same as the Revised Statutes, section 8425, of Idaho's territorial law). The legislature, in 1927, when it adopted the Uniform Criminal Extradition Act, added some very important language to its existing section 9348 rather than using the section on costs and expenses from § 24 of the Extradition Act. Section 9348 of the Compiled Statutes of Idaho has remained unaltered since its amendment in 1927 and gives the clearest answer to the question of who bears the cost of extraditing prisoners. As originally passed and as presently found, this statute reads:

*Claims for services of executive agents* — When the governor of this state, . . . demands from the executive authority of any state . . . the surrender to the authorities of this state of a fugitive from justice, . . . the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners and paid out of the state treasury, provided that in any case where a person against whom criminal proceedings are pending in any court of this state is to be brought into this state for such proceedings, whether with or without any demand or proceedings by the governor of this state and there is *no appropriation of state funds available* for the purpose at the time, reasonable compensation for the services of any person employed to bring the defendant in such criminal proceedings to this state and his expenses and the *expenses on account of the said defendant may be allowed and paid at the discretion of the board of county commissioners of the county where such criminal proceedings are pending from the general fund of said county*, but no compensation for services as distinguished from expenses other than the regular salary shall be allowed any sheriff or deputy sheriff from either state or county funds.

Idaho Code § 19-4528 (emphasis supplied).

The statute essentially directs the extradition agent named by the governor to look to the state for his expenses, and if it has no funds for extradition, then to look to the county initiating the requisition. In exercising the discretion which this statute gives the county commissioners as to whether or not they will pay the expenses of extradition, it would be a mistake for the commissioners to be guided solely by financial considerations, as important as these are. While a county need not extradite every fugitive from justice who is charged with a felony offense in that county, it would be a serious breach of duty to allow offenders to escape with impunity by fleeing from Idaho justice.

The county commissioners' stewardship under Idaho Code § 31-802 to supervise other county officers and to see that they "faithfully perform their duties," includes the supervision of the county prosecuting attorney. The prosecutor, under Idaho Code § 31-2227, shares with the county sheriff primary responsibility for enforcing all of the penal provisions of the statutes of this state, and services authorized by him in the criminal justice process are county expenses. Idaho Code § 31-3302. The decision to apply to the governor for a warrant of extradition is committed to the discretion of the county prosecuting attorney.

When the return to this state of a person charged with a crime in this state is required, *the prosecuting attorney of the county in which the offense is committed* shall present to the governor his written application for a requisition for the return of the person charged.

Idaho Code § 19-4523 (emphasis supplied).

In making the decision to extradite a fugitive, the county prosecutor goes through a process of balancing costs and needs. The criteria which guide a county prosecutor's discretion are set out in the Idaho Extradition Manual prepared by the Attorney General's office.<sup>2</sup> These same factors may assist county commissioners in the exercise of their decision to pay the costs of extradition. It is noteworthy that none of the criteria set out in the extradition manual concerns whether or not a prisoner has been charged by the city police rather than the county sheriff.

Absent an abuse of discretion by the prosecuting attorney, the county commissioners must honor his decision by paying the costs of extradition. Indeed, by initiating extradition, the county prosecutor may, under an agency theory, obligate the county; therefore, it is advisable for the prosecutor and the commissioners to act in concert.

The prosecuting attorney also nominates to the governor an agent to be appointed to receive the fugitive and return him to the State of Idaho. It is common practice for the prosecuting attorney to nominate as agent the sheriff or his deputy. Regardless of who is commissioned, the agent is then required to return the prisoner to the proper officer of the *county* — another statutory provision signifying that extradition is a county responsibility.

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<sup>2</sup>In applying for requisition, the following factors should be considered: (1) The basic circumstances of the offense. (2) The character of the offense. (3) The magnitude of the offense. (4) The evidence by which it is claimed that the crime may be proved. (5) The substantive and procedural law applicable to the circumstances. (6) The character of the defendant. (7) The number of his prior convictions and the nature of the crimes involved. (8) The probability of his committing similar crimes in other communities. (9) The probable length of time he will be incarcerated and the effect of imprisonment upon the defendant after his release in deterring further acts of crime in this state. (10) Does the prosecutor think the individual is guilty? (11) Consider all the factors often used to determine whether or not a prosecutor should bring charges. See *The Prosecutor's Deskbook*, Second Ed., p.7. These facts and factors are all weighed against: (1) The probability of a Warrant of Rendition being authorized by the governor of the asylum state. (2) The financial cost of the accused's return for prosecution. (3) The effect of a refusal upon those who may contemplate the commission of a crime in the state.

Whenever the governor of this state shall demand a person charged with crime in this state from the chief executive of any other state, . . . he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and *convey him to the proper officer of the county in this state in which the offense was committed.*

Idaho Code § 19-4522 (emphasis supplied).

Just as a county sheriff exercises discretion in the manner in which the law shall be enforced, the county prosecuting attorney exercises discretion as to what crimes shall be charged and whether prosecution shall proceed. Any decision thereafter to extradite a prisoner is a non-usurpable function of the prosecuting attorney. Idaho Code § 19-4523. Because the decision to extradite imposes expenses upon the county, the prosecutor should surely consult the board of commissioners. Indeed, once the prosecutor has extradited a prisoner, the expenses are a charge against the country.

#### RESPONSIBILITIES AND COSTS FOR PRISONERS IN THE COUNTY JAIL

Bearing in mind the policy of the State of Idaho that it is the primary responsibility of the sheriff and the prosecuting attorney of each of the several counties to enforce the penal provisions of the state, this analysis now examines the responsibility of the sheriff to accept and be responsible for the costs of prisoners who have been charged with violation of state statutes by city police officers. Also considered is the sheriff's obligation to accept prisoners from a city which has not paid its prisoner costs where it is obligated to do so.

It is a duty of the sheriff to "take charge of and keep the county jail and the prisoners therein." Idaho Code § 31-2202. Other sections of the Idaho Code are of like command:

The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated.

Idaho Code § 20-601.

Moreover, the county bears "the expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail." Idaho Code § 31-3302.

The state's statutes deal with *county* jails. There are no statutes which require that cities keep jails. When one understands the relationship of the county viz a viz the city as discussed above, this is understandable, for it is the responsibility of the county officers to enforce state laws.

This is not to say that counties must bear the costs of housing all prisoners delivered to the county by city police officers. By statute, the county need not bear the cost of housing prisoners who have violated city law.

. . . (A)ny city shall have the right to use the jail of the county for the confinement of (persons who are charged with or convicted of violation of a city ordinance) but it shall be liable to the county for the costs of keeping such prisoner.

Idaho Code § 50-302A.

The city should, logically, be responsible for jail costs of enforcing its ordinances. Aside from the lack of interest counties have in the enforcement of city ordinances, the logic of the statute's cost provisions is enhanced when read beside the statutes pertaining to revenue generated by fines for forfeitures: cities receive 90 percent of the fines and forfeitures remitted for violation of city ordinances. Idaho Code § 19-4705. Cities also receive 90 percent of fines and forfeitures resulting from their enforcement of state motor vehicle laws; therefor, they bear the cost of imprisoning such offenders in the county jail.<sup>3</sup> Idaho Code § 20-605. While the sheriff, for reasons discussed below, cannot refuse to accept city prisoners for failure of the city to pay for its prisoners, the county would be justified in taking legal measures to recoup its charges, should the city refuse to pay for its prisoners as required by law.

Inasmuch as cities provide police officers who assume responsibility similar to the sheriff's in enforcing the state's penal laws within that area of the county which lies within city limits, the legislature has apparently deemed it fair to apportion to the city 90 percent of any fines and forfeitures arising out of state criminal violations where an arrest is made by a city police officer. Idaho code § 19-4705. The sheriff's costs for housing a prisoner on state misdemeanor or felony charges brought by a city officer are justified by the contribution toward the sheriff's responsibilities for enforcing state laws. It should also be noted that city residents also pay taxes to the county — another justification for having the county bear the expenses of housing city prisoners who have violated state law.

Discussion of financial allotments of fines and forfeitures between the sheriff and city police simply suggest that there is fairness in the statutory scheme. Of greater significance is the fact that the statutes require that room be made in the county jail for prisoners charged by other law enforcement agencies, for instance, city prisoners (Idaho Code §§ 50-302A, 20-605), federal prisoners (Idaho Code § 20-615), and prisoners arrested by the Idaho State Police (Idaho Code § 19-4809). The sheriff cannot refuse to house prisoners simply because it is not an advantageous business arrangement for the county.

Idaho Code § 20-612 also makes it abundantly clear that the sheriff must accept all prisoners: "The sheriff must receive all persons committed to jail by competent authority." Despite the numerous code sections cited above showing that the sheriff has an affirmative duty to house prisoners arrested by other agencies, the dispute as to costs may lead some persons to quibble over the words "committed . . . by competent authority." The argument might be made that, all of the other code provisions notwithstan-

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<sup>3</sup>While Idaho Code § 20-605 by itself might give the impression that cities are responsible only to counties other than the one in which they are located for costs of prisoners they have charged with motor vehicle violations, such a conclusion is illogical and unwarranted when Idaho Code § 20-605 is read in the context of companion statutes. For instance, Idaho Code § 19-604 allows a judge to commit an offender to "any county or municipal jail or other confinement facility within the judicial district in which the court is located," (emphasis supplied), and the city will be liable therefor for the cost of its prisoners.

ding, a sheriff has no duty to accept a prisoner from another agency until the prisoner has been *committed* by a court. Without lengthy exegesis, this position has no merit. It is true that the word "committed," while nowhere defined in the code, probably does have reference to the order of a court confining a prisoner.<sup>4</sup> However, prisoners are not detained only on court order. Idaho law gives city police officers and state police officers authority to arrest criminals in the same manner as the sheriff. Idaho Code §§ 19-4804, 50-209. The process of confinement of criminal defendants is commenced in most cases by lawful arrest, which means "taking a person into custody in a case and in the manner authorized by law." Idaho Code §§ 19-601, 19-603. Moreover, in a probable cause arrest a person is charged before he is committed by any court process. It would be unreasonable for a peace officer to have the statutory authority to arrest and take into custody a law violator, but not have the authority to confine the person in jail until the person is committed by a court process, which may be from 24 to 72 hours after arrest. Idaho Criminal Rule 5(b), Idaho Code §§ 18-702, 19-615, 19-515. (Moreover, such an interpretation of Idaho Code § 20-612 would not only preclude cities and other agencies from housing prisoners in the county jail until committed by a magistrate, but it would also preclude the sheriff from housing his own prisoners there until committed by a judge! The absurdity of this logic is patent.) Police officers having the implied powers necessary in order to accomplish their lawful duties, also have the power to confine prisoners in the county jail to await first appearance without warrants or orders of confinement.

Where officers are entrusted with general powers to accomplish a given purpose. such powers include as well all incidental powers or those that may be deduced from the ends intended to be accomplished.

*Cornell v. Harris*, 60 Idaho 87, 93, 88 P.2d 498 (1939).

In *Lanson v. Washington County*, 16 Idaho 618, 102 P. 344 (1909), the Idaho Supreme Court upheld a sheriff's exercise of implied powers in a case analogous to the question presented here. Having no secure facility for housing a seriously ill, female defendant, the sheriff of Washington County posted a guard outside of her hospital room. The issue was stated and answered as follows:

Can the sheriff, when the necessity arises, appoint guards and employ assistants to aid him in performing the duties of his office, and will the expenses incurred thereby become a county charge? . . . Under such circumstances, in addition to the general authority expressly given by the statute to the sheriff, he is also by implication given such additional authority as is necessary to carry out and perform the duties imposed upon him by law . . . . In other words, the express authority given to the officer by statute carries with it by implication such additional authority as is necessary to efficiently execute the express authority given.

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<sup>4</sup>A computer identification of the use of "commit!" in titles 19 and 20, Idaho Code, lists 272 references in 149 statutory sections. The term is used with greater frequency to refer to the commission of a crime, nevertheless 115 references leave no doubt that "commitment" means to confine by court order, which is the general usage of the word in other American jurisdictions. Ballentine's LAW DICTIONARY 3rd Ed. "Commitment" page 225. See also, 21 Am. Jur. 2d "Criminal Law" § 450.

*Lansdon*, 16 Idaho at 623-24, 102 P. at 346.

That the sheriff is to receive prisoners before they are formally committed to jail by court order is clear from Idaho Code § 50-302A which gives a city the right to use its county's jail for "persons who are *charged* with" a law violation. This statute is silent as to any requirement that the charged person be received into jail on a court commitment.

Finally, and most significantly, giving Idaho Code § 20-612 the erroneous reading suggested above, would bring it into conflict with another statute, the command of which is unequivocal and the violation of which is punishable by imprisonment:

Every sheriff, coroner, keeper of a jail, constable or other peace officer, who wilfully refuses to receive or arrest any person charged with criminal offense, is punishable by fine not exceeding Five Thousand (\$5,000) and imprisonment in the county jail not exceeding one (1) year.

Idaho Code § 18-701.

In conclusion, while the county has the right to collect costs incurred in housing city prisoners confined there on city ordinance violations or on motor vehicle violations committed in city limits, it would be a serious breach of the county's responsibilities to refuse to house prisoners charged by city police officers because of the city's failure to pay its costs. There are remedies by which such costs can be collected and the sheriff has a duty to accept the prisoners regardless of payment. Despite the lack of provision for reimbursement, the sheriff must accept and house city prisoners charged with state law violations. The consequences for a sheriff who refuses to perform his duties are more than financial: he may be removed from office or he may, himself, be charged with a crime.

#### AUTHORITIES CONSIDERED:

1. Constitutions:

Idaho Const. art. XVIII, §§ 1-5  
Idaho Const. art. XII, §§ 1 and 2  
Idaho Const. art. XVIII, § 6

2. Statutes:

Idaho Code § 18-701  
Idaho Code § 18-4528  
Idaho Code § 20-605  
Idaho Code § 19-4522  
Idaho Code § 19-4523  
Idaho Code § 19-4705  
Idaho Code § 20-601  
Idaho Code § 20-612

Idaho Code § 31-802  
Idaho Code § 31-714  
Idaho Code § 31-2202  
Idaho Code § 31-2227  
Idaho Code § 31-3302  
Idaho Code § 50-101  
Idaho Code § 50-209  
Idaho Code § 50-302  
Idaho Code § 50-302A

3. Rules and Regulations:

Uniform Criminal Extradition Act § 24

4. Idaho cases:

*Strickfaden v. Greencreek Highway District*, 42 Idaho 738, 248 P.456 (1926)

*State v. Whelan*, 103 Idaho 651, 63, 651 P.2d 916 (1982)

*State v. Webb*, 96 Idaho 325, 528 P.2d 669 (1974)

*Cornell v. Harris*, 60 Idaho 87, 93, 88 P.2d 498 (1939)

*Roberts v. Board of Commissioners of Custer County*, 17 Idaho 379, 105 P. 797 (1909)

*Lansdon v. Washington County*, 16 Idaho 618, 102 P. 344 (1909)

*State v. Quong*, 8 Idaho 191, 67 P. 491 (1902)

*Kroutinger v. Board of Examiners*, 8 Idaho 463, 466, 69 P. 279 (1902)

*Settle v. Sterling*, 1 Idaho 259, 262 (1869)

5. Cases Cited From Other Jurisdictions:

*Ex Parte United States*, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed.2d 129 (1916)

6. Other Authorities:

MURFREE, Williams, A TREATISE ON THE LAW OF SHERIFFS § 2, (2d Ed., 1890).

1 ANDERSON ON SHERIFFS § 2

RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE, (Unabridged Edition).



DATED this 10th day of February, 1984.

JIM JONES  
ATTORNEY GENERAL  
STATE OF IDAHO

ANALYSIS BY:

D. MARC HAWS  
Deputy Attorney General  
Chief, Criminal Justice Division

### ATTORNEY GENERAL OPINION NO. 84-5

TO: Mr. Darrel V. Manning  
Director  
Idaho Transportation Department  
P.O. Box 7129  
Boise, Idaho 83707

Per Request for an Attorney General Opinion

QUESTION PRESENTED:

You have asked whether Idaho Code § 18-1502 (c), which requires the department of transportation to suspend the driving privileges of person under the age of 19 who have been convicted of alcohol offenses not related to the operation of a motor vehicle, is constitutional?

CONCLUSION:

Paragraph (c) of Idaho Code § 18-1502 is unconstitutional on equal protection grounds — and probably on substantive due process grounds — because the suspension of driver's licenses of minors following convictions for offenses having no rational relationship to the operation of a motor vehicle does not substantially further a legitimate, articulated state purpose. The statute also fails to provide procedural due process which the Constitution requires before any right or interest, such as that represented by a driver's license, is suspended by the state; before a driver's license is forfeited, a motorist must have an opportunity to challenge the suspension, including the lack of relationship between the statute violated and the sanction imposed.

ANALYSIS:

Idaho Code §§ 18-1502 (a) and (b) make it a misdemeanor for a person to violate any federal, state, or municipal law or ordinance which forbids, on the basis of age, the procurement, possession, or use of an alcoholic beverage. In 1983 the legislature enacted an additional penalty section which reads as follows: