

IN THE SENATE

SENATE BILL NO. 1369

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO COUNTY OFFICERS; AMENDING CHAPTER 20, TITLE 31, IDAHO CODE, BY
2 THE ADDITION OF A NEW SECTION 31-2002, IDAHO CODE, TO PROVIDE FOR DUTIES
3 OF THE ATTORNEY GENERAL RELATING TO PRELIMINARY INVESTIGATIONS AND AC-
4 TIONS AGAINST COUNTY ELECTED OFFICERS, TO AUTHORIZE THE ATTORNEY GEN-
5 ERAL TO ISSUE SUBPOENAS, TO PROVIDE AN EXCEPTION AND TO DEFINE A TERM;
6 AMENDING SECTION 31-2227, IDAHO CODE, TO PROVIDE A CERTAIN EXCEPTION
7 RELATING TO THE PRIMARY RESPONSIBILITY FOR ENFORCING PENAL LAWS AND TO
8 MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION 67-1401, IDAHO CODE,
9 TO PROVIDE THAT THE ATTORNEY GENERAL SHALL RESPOND TO ALLEGATIONS OF VI-
10 OLATION OF STATE LAW BY ELECTED COUNTY OFFICIALS.
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Chapter 20, Title 31, Idaho Code, be, and the same is
14 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
15 ignated as Section 31-2002, Idaho Code, and to read as follows:

16 31-2002. PRELIMINARY INVESTIGATIONS AND ACTIONS AGAINST COUNTY
17 ELECTED OFFICERS -- DUTIES OF ATTORNEY GENERAL. (1) Notwithstanding any
18 provision of law to the contrary, the attorney general shall conduct a pre-
19 liminary investigation of any allegation of a violation of state law, civil
20 or criminal, against a county officer occupying an elective office for vio-
21 lation of state law in his official capacity.

22 (2) Upon completion of the preliminary investigation, the attorney
23 general may:

24 (a) Issue a finding of no further action necessary;

25 (b) Prescribe training or other nonjudicial remedies; or

26 (c) Issue a finding that further investigation or prosecution is war-
27 ranted, provided that the attorney general shall refer a recommendation
28 for further investigation or prosecution to the county prosecutor who
29 shall seek appointment of a special prosecutor. If the attorney general
30 issues a finding that further investigation or prosecution is warranted
31 against a county prosecutor, the attorney general shall retain the mat-
32 ter and act as special prosecutor.

33 (3) In furtherance of the duty to conduct investigations set forth in
34 the provisions of this section, the attorney general shall have the author-
35 ity to issue subpoenas for the production of documents or tangible things
36 that may be relevant to such investigations.

37 (4) The provisions of this section shall not apply to any alleged vio-
38 lations of the open meetings law as codified in chapter 23, title 67, Idaho
39 Code.

40 (5) For purposes of this section, a county officer occupying an elec-
41 tive office shall be deemed to have performed an act in his "official capac-
42 ity" when such act takes place while the officer is working or claims to be

1 working on behalf of his employer at his workplace or elsewhere, while the
 2 officer is at his workplace whether or not he is working at the time, involves
 3 the use of public property or equipment of any kind or involves the expendi-
 4 ture of public funds.

5 SECTION 2. That Section 31-2227, Idaho Code, be, and the same is hereby
 6 amended to read as follows:

7 31-2227. ENFORCEMENT OF PENAL LAWS -- PRIMARY RESPONSIBILITY. (1) Ir-
 8 respective of police powers vested by statute in state, county, and municip-
 9 al officers, and except where otherwise provided in Idaho Code, it is hereby
 10 declared to be the policy of the state of Idaho that the primary duty of en-
 11 forcing all the penal provisions of any and all statutes of this state, in
 12 any court, is vested in the sheriff and prosecuting attorney of each of the
 13 several counties. When, in the judgment of such county officers, they need
 14 assistance from municipal peace officers within the county, they are autho-
 15 rized and directed to call for such assistance and ~~such~~ local officers shall
 16 render ~~such~~ assistance.

17 (2) When, in the judgment of such county officers, advice and/or as-
 18 sistance is needed which is not available in the county, the sheriff and/or
 19 the prosecuting attorney are directed to call upon the Idaho state police for
 20 such advice and assistance and the department shall render such cooperative
 21 service. Whenever in the opinion of the governor any peace officer of this
 22 state refuses to offer assistance when requested to do so, or refuses to per-
 23 form any duty enjoined upon him by the penal statutes of this state, the gov-
 24 ernor shall direct the attorney general to commence action under chapter 41,
 25 title 19, Idaho Code, to remove such officer from office.

26 (3) When in the judgment of the governor the penal laws of this state are
 27 not being enforced as written, in any county, or counties, in this state, he
 28 may direct the director of the Idaho state police to act independently of the
 29 sheriff and prosecuting attorney in such county, or counties, to execute and
 30 enforce such penal laws. In such an instance, the attorney general shall ex-
 31 clusively exercise all duties, rights and responsibilities of the prosecut-
 32 ing attorney.

33 SECTION 3. That Section 67-1401, Idaho Code, be, and the same is hereby
 34 amended to read as follows:

35 67-1401. DUTIES OF ATTORNEY GENERAL. Except as otherwise provided in
 36 this chapter, it is the duty of the attorney general:

37 (1) To perform all legal services for the state and to represent the
 38 state and all departments, agencies, offices, officers, boards, commis-
 39 sions, institutions and other state entities, in all courts and before all
 40 administrative tribunals or bodies of any nature. Representation shall be
 41 provided to those entities exempted pursuant to the provisions of section
 42 67-1406, Idaho Code. Whenever required to attend upon any court or adminis-
 43 trative tribunal, the attorney general shall be allowed necessary and actual
 44 expenses, all claims for which shall be audited by the state board of exam-
 45 iners.

1 (2) To advise all departments, agencies, offices, officers, boards,
2 commissions, institutions and other state entities in all matters involving
3 questions of law.

4 (3) After judgment in any of the causes referred to in this chapter, to
5 direct the issuing of such process as may be necessary to carry the same into
6 execution.

7 (4) To account for and pay over to the proper officer all moneys re-
8 ceived which belong to the state.

9 (5) To supervise nonprofit corporations, corporations, charitable or
10 benevolent societies, person or persons holding property subject to any pub-
11 lic or charitable trust and to enforce whenever necessary any noncompliance
12 or departure from the general purpose of such trust and, in order to accom-
13 plish such purpose, said nonprofit corporations, corporations, charitable
14 or benevolent societies, person or persons holding property subject to any
15 public or charitable trust are subject at all times to examination by the at-
16 torney general, on behalf of the state, to ascertain the condition of its af-
17 fairs and to what extent, if at all, said trustee or trustees may have failed
18 to comply with trusts said trustee or trustees have assumed or may have de-
19 parted from the general purpose for which it was formed. In case of any such
20 failure or departure, the attorney general shall institute, in the name of
21 the state, any proceeding necessary to enforce compliance with the terms of
22 the trust or any departure therefrom.

23 (6) To give an opinion in writing, without fee, to the legislature or
24 either house thereof, or any senator or representative, and to the gover-
25 nor, secretary of state, treasurer, state controller, and the superinten-
26 dent of public instruction, when requested, upon any question of law relat-
27 ing to their respective offices. The attorney general shall keep a record of
28 all written opinions rendered by the office and such opinions shall be com-
29 piled annually and made available for public inspection. All costs incurred
30 in the preparation of said opinions shall be borne by the office of the attor-
31 ney general. A copy of the opinions shall be furnished to the supreme court
32 and to the state librarian.

33 (7) When required by the public service, to repair to any county in the
34 state and assist the prosecuting attorney thereof in the discharge of du-
35 ties.

36 (8) To bid upon and purchase, when necessary, in the name of the state,
37 and under the direction of the state controller, any property offered for
38 sale under execution issued upon judgments in favor of or for the use of the
39 state, and to enter satisfaction in whole or in part of such judgments as the
40 consideration for such purchases.

41 (9) Whenever the property of a judgment debtor in any judgment men-
42 tioned in subsection (8) of this section has been sold under a prior judg-
43 ment, or is subject to any judgment, lien, or encumbrance, taking precedence
44 of the judgment in favor of the state, under the direction of the state
45 controller, to redeem such property from such prior judgment, lien, or en-
46 cumbrance; and all sums of money necessary for such redemption must, upon the
47 order of the board of examiners, be paid out of any money appropriated for
48 such purposes.

49 (10) When necessary for the collection or enforcement of any judgment
50 hereinbefore mentioned, to institute and prosecute, in behalf of the state,

1 such suits or other proceedings as may be necessary to set aside and annul all
2 conveyances fraudulently made by such judgment debtors; the cost necessary
3 to the prosecution must, when allowed by the board of examiners, be paid out
4 of any appropriations for the prosecution of delinquents.

5 (11) To exercise all the common law power and authority usually apper-
6 taining to the office and to discharge the other duties prescribed by law.

7 (12) To report to the governor, at the time required by this section, the
8 condition of the affairs of the attorney general's office and of the reports
9 received from prosecuting attorneys.

10 (13) To appoint deputy attorneys general and special deputy attorneys
11 general and other necessary staff to assist in the performance of the du-
12 ties of the office. Such deputies and staff shall be nonclassified employees
13 within the meaning of section 67-5302, Idaho Code.

14 (14) To establish a medicaid fraud control unit pursuant to the provi-
15 sions of section 56-226, Idaho Code, and to exercise concurrent investiga-
16 tive and prosecutorial authority and responsibility with county prosecutors
17 to prosecute persons for the violation of the criminal provisions of chap-
18 ter 2, title 56, Idaho Code, and for criminal offenses that are not defined
19 in said chapter 2, title 56, Idaho Code, but that involve or are directly re-
20 lated to the use of medicaid program funds or services provided through the
21 medicaid program.

22 (15) To seek injunctive and any other appropriate relief as expedi-
23 tiously as possible to preserve the rights and property of the residents of
24 the state of Idaho, and to defend as necessary the state of Idaho, its offi-
25 cials, employees and agents in the event that any law or regulation violating
26 the public policy set forth in the Idaho health freedom act, chapter 90,
27 title 39, Idaho Code, is enacted by any government, subdivision or agency
28 thereof.

29 (16) To establish an internet crimes against children unit pursuant to
30 the provisions of section 67-1410, Idaho Code, and to exercise concurrent
31 investigative and prosecutorial authority and responsibility with county
32 prosecutors to prosecute persons for the violation of the criminal provi-
33 sions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which
34 may also encompass criminal offenses that are not defined in said sections
35 but that involve or are directly related to child pornography and sollicita-
36 tion of minors for pornography, prostitution or sex-related offenses.

37 (17) To respond to allegations of violation of state law by elected
38 county officers, to investigate such claims, to issue appropriate findings
39 and to refer such cases for further investigation and prosecution pursuant
40 to section 31-2002, Idaho Code.