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City of Huetter v. Keene Appellant's Brief Dckt. 35470

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IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF HUETTER, an Idaho municipal
corporation,)

Plaintiff/Respondent,)

vs.)

BRADLEY W. KEENE and JENNIFER
L. BROWN,)

Defendants/Appellants.)

SUPREME COURT NO. 35470

APPELLANT'S BRIEF

**APPEAL FROM THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

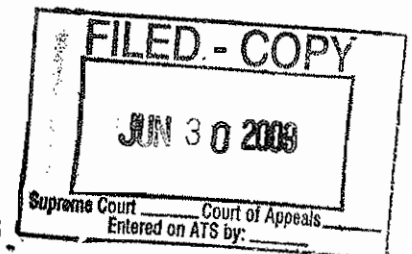
**HONORABLE LANSING L. HAYNES
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III. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case involves a contest to Keene's right to hold office as mayor. On March 19, 2008, the City of Huetter ("Huetter"), through its city attorney, filed a verified Request for Declaratory Judgment to Ascertain Status, and Request for Injunction seeking a declaration of the rights, status, and other legal relations between its mayor, Brad Keene ("Keene"), and a council member, Jennifer Brown ("Brown). R p. 1-2. The petition sought "interpretation of the Idaho constitution and state statutes related to elections and municipal offices so that the status and legal relations between the parties may be clarified." R p. 2. The petition contested Keene's and Brown's right to continue to hold office as incumbents. The City sought a declaration that Keene and Brown became ineligible to hold office by operation of law. The City also argued that Keene and Brown became ineligible to hold office pursuant to I.C. § 50-469, specifically that their offices became vacant by operation of law or pursuant to I.C. § 50-469, because their voter registration was cancelled January 18, 2008 and they were not re-registered until February 25, 2008. R p. 10-11.

B. COURSE OF THE PROCEEDINGS

The City filed its Request for Declaratory Judgment to Ascertain Status, and Request for Injunction on March 19, 2008. R p. 1. A preliminary Injunction hearing was scheduled for April 3, 2008. R p. a. Keene and Brown filed a Notice of Appearance in the matter on March 31, 2008. R p. 20-21. Keene and Brown also filed a Memorandum in Opposition to the Hearing on Declaratory Judgment to Ascertain Status, and Request for Injunction.

The trial court denied the City's request for a preliminary injunction, finding that the City had failed to demonstrate that immediate and irreparable injury, loss, or damage would

result to the City of Huetter. R p. 33. Subsequently, the parties stipulated to a Preliminary Injunction and expedited trial for April 24, 2008, together with an expedited briefing schedule. R p. 33-36.

The City filed its trial memorandum, denominated as “Reply to Defendants’ Opposition to Request for Declaratory Judgment to Ascertain Status” on April 10, 2008. R p. 37-44. Keene and Brown filed their Reply Memorandum in Opposition to Declaratory Judgment on April 16, 2008. R p. 45-50. On April 21, 2008 the parties provided Stipulated Facts to the trial court. R p. 51-53.¹

The matter proceeded to trial on April 24, 2008 as scheduled. Tr p. 2, p. 4, L. 1-6. Prior to trial, the parties stipulated to the admission of the petition of candidacy of Keene and Brown and admission of a packet of letters sent by the county clerk notifying Keene and Brown that their challenges to their voter registration were due to residence challenges.² Tr p. 5, L. 19-25; p. 5, p. 6, L. 1-22.

At the conclusion of evidence, the trial court entertained legal argument. Tr p. 29, L. 1-5. The trial court allowed post-trial briefing to address the case of *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917) which was argued for the first time at the trial of the matter. Tr p. 51, L. 14-22. Both parties submitted post trial briefing on April 28, 2008 addressing the application of *Clark v. Wonnacott, supra*. R p. 54-65.

Following receipt of post-trial briefing, the trial court entered its Memorandum Opinion, Findings of Fact and Conclusions of Law on May 6, 2008. R. p. 66-78. A final judgment was entered by the trial court on May 16, 2008. R p. 77-78. A notice of appeal was filed by Keene and Brown on June 27, 2008. R p. 79-82. An amended Notice of Appeal was

¹ For unknown reasons, the appellate record does not contain page 1 to the stipulated facts.

² It is unknown where these stipulated evidentiary documents are located. They were not included with the stipulated facts filed by the court, and the Clerk’s Certificate of Exhibits on appeal indicates there are no exhibits in the case. R p. b.

filed August 1, 2008. R p. 82-86. On January 26, 2009, an uncontested motion to withdraw as attorney of record for appellant Brown was filed. This Court granted the motion on to withdraw on March 19, 2009.

C. CONCISE STATEMENT OF FACTS

On March 18, 2008, the City filed a complaint for declaratory judgment, verified by its City Attorney, seeking a ruling from the trial court that Keene was ineligible to hold office as the mayor and Brown was ineligible to hold office as a council person as a result of their removal from the voter registration rolls. The City sought declaration that pursuant to Idaho Const. Art. VI, § 2; and I.C. §§ 50-402(c); 50-412; 50-413; 50-469; 50-601 and 50-702 that Keene and Brown became ineligible to hold office when their registration was cancelled and that vacancies existed in their office. R p. 3-19.

Prior to the November 6, 2007 elections, Keene and Brown timely filed verified declarations of candidacy that complied with I.C. § 50-432. R p. 51, Stipulated Fact 1. On November 9, 2007, the City canvassed the votes and determined Keene was elected Mayor and Brown was elected as a council person. R p. 51, Stipulated Facts 3 and 4. On January 9, 2008, Keene was sworn into office as mayor and Brown was sworn into office as a councilman at a regularly scheduled and noticed meeting of the City. R p. 51, Stipulated Fact 6.

During the election, a challenge was entered against Keene and Brown in the election record and poll book. The city clerk notified the Kootenai County Election Department of all challenges in the combination election record and poll book. R p. 51, Stipulated Fact 2. The challenge came from a challenger at the polling place to the oath of the elector. Tr p. 15, L. 1-6.

On December 28, 2007, the Kootenai County Elections Department prepared individual notifications for Keene and Brown notifying them their registration was challenged due to

residency challenges. Tr p. 4, L. 19-25; p. 5, L. 1. These letters were sent out December 28, 2007. Tr p. 9, L. 24-25; p. 10, L. 1-5. These notices were sent to Keene and Brown by certified mail. R p. 51, Stipulated Fact 5. Idaho Code § 34-432 does not specify that the notice is to be sent by certified mail. Rather, it requires that the notice be sent by mail to the mailing address indicated on the elector's registration card.

At the trial on this matter, the election manager for Kootenai County, Deedie Beard, acknowledged that her job duties were controlled by the applicable statutes. Tr p. 7, L. 22-25; p. 8, L. 1-19. However, in this instance, the election manager testified she veered from the statutory requirements on the mailing of the notice of voter challenge and sent the letter certified mail, because of the strict time requirements in the statute so that she could ascertain that the challenged voters actually received the notice before their voter registration was cancelled. Tr p. 8, L. 20-25; p. 9, L. 1-20. Ms. Beard testified that normally she would have mailed those restricted delivery, but it was not done in this instance due to oversight. Tr p. 10, L. 10-22.

The letter that was sent did not inform the challenged electors that they had to appear in person in the county clerk's office or respond in writing to the challenge. It merely indicated the challenged elector needed to reply to the challenge within 20 days or their registration would be cancelled. It did not indicate that a telephone call would not meet the request for a reply. Tr p. 15, L. 7-25; p. 16, L. 1-4.

At the time the notice was sent, Keene was working 60 hour weeks and his time off did not coincide when the post office was opened. Tr p. 25, L. 6-25; p. 26, L. 1-3; R p. 51, Stipulated fact 5. Because the notice was sent certified mail, Keene's work schedule precluded his ability to retrieve it. Keene's certified letter was returned to Kootenai County as unclaimed on January 15, 2008. Tr p 24, L 12-18. (However, Brown informed Keene of what her

envelope contained. Tr p. 26, L. 24-25; p. 27, L. 1-12.) Despite the fact that the election department knew Keene had not received his letter, and the purpose of sending it certified mail was to ascertain receipt before cancellation, the election department proceeded to cancel Keene's registration. R p. 13-14.

Brown's letter was not sent to the mailing address on her voter registration as required by statute. Tr p. 16, L. 8-19. Nonetheless, Brown received her notice January 8, 2009. Tr p. 10, L. 23-25; p. 11, L. 1-4. Brown called the election manager the same day as she picked up the letter. Tr p. 12, L. 12-19. The election manager was not available and called back in response to a message left by Brown. Tr p. 12, L. 10-15.

Brown inquired during the return call why she was challenged. The election manager explained the challenge and stated that Brown took the oath of as a challenged voter. The election manager told Brown she had 20 days to respond. The election manager also informed Brown that if her room mate's returned a written reply that it should be limited to one per envelope. The election manager agreed that Brown could re-register if cancelled. However, the election manager did not tell Brown that re-registration would satisfy the requirement of a reply to the challenge. Conversely, she did not inform Brown that re-registration would not satisfy the challenge when inquiry was made about re-registering. Tr p. 12, L. 10-25; p. 13, L. 1-6 Ms. Beard did not inform Brown that the January 8, 2009 phone call did not meet the reply requirements of the challenge and that she had to appear in person at election manager's office. Tr p. 19, L. 12-21.

Subsequently, effective January 18, 2008, Keene and Brown's registration was cancelled. R p. 52, Stipulated Fact 7. On January 18, 2008, Art Macomber, City Attorney for Huetter, was informed by the Kootenai County Elections Department that Keene and Brown's voter registration had been cancelled. R p. 13-14.

On February 13, 2008, Keene and Brown attended a city council meeting. At that meeting, Keene and Brown sat down at the council table. The City refused to recognize or seat Keene and Brown based upon the City Attorney's advice that Keene and Brown were ineligible to hold office and their offices were vacant due to their removal from the voter registration rolls. R p. 52, Stipulated Fact 8. Brown and Keene were informed by the city attorney and two council members that they could not participate in city government because they had been deleted from the voter registration and had forfeited their rights to their positions. R p 4. On February 14, 2008, Keene and Brown appeared before Kootenai County's official registrar to again register as voters. They were not registered as requested. Keene and Brown submitted a written demand pursuant to I.C. § 34-412(2) for a hearing within ten days to determine their qualifications to register as voters. R p. 52, Stipulated Fact 9.

On February 25, 2008, a hearing was held by the county clerk. At the hearing, Keene and Brown presented evidence of their qualifications to register. Dan English, Kootenai County Clerk, determined Keene and Brown were qualified to register and upon the conclusion of the hearing, registered them as voters. R p. 52, Stipulated Fact 10. As of February 25, 2008, and pursuant to I.C. § 34-408, the registration roll was open for registering voters. R p. 52, Stipulated Fact 11.

On March 12, 2008, Keene and Brown's legal counsel provided a letter to the City's attorney challenging the decision to block them from participation in city government. R p. 18. On March 19, 2008, the City's attorney participated in a telephone conference with Chief Deputy Secretary of State Tim Hurst and Deputy Attorney General Mitchell E. Toryanski. Following that conversation, Mr. Toryanski provided a letter dated March 19, 2008 to the city attorney expressing the opinion that cancellation of a voter registration did not result in automatic ouster or a vacancy in office. R p. 15.

This action followed. The trial court entered findings of facts, and conclusions of law. The findings of fact were in conformance with the evidence presented, much of which was stipulated. It is the trial court's conclusions of law which are challenged.

IV. ISSUES ON APPEAL

1. Did the trial court err in its interpretation of the provisions of I.C. § 50-469?
2. Did the trial court err in finding I.C. §50-469 created a new method for contesting an incumbent's right to continue in Office?
3. Did the trial court Err when it determined that Keene became ineligible to hold office as a result of the cancellation of his voter registration on January 18, 2008?
4. Is Keene entitled to attorney fees on appeal?

V. STANDARD ON REVIEW

In *Curlee v. Kootenai County Fire and Rescue*, ___ Idaho ___, ___ P.3d ___ (Docket No. 34460)(2008) this court held:

Our standard of review for statutory interpretation is well established:

The interpretation of a statute is a question of law over which this Court exercises free review. *State v. Hart*, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001). Interpretation of a statute begins with an examination of the statute's literal words. *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Where the language of a statute is plain and unambiguous, courts give effect to the statute as written, without engaging in statutory construction. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). Only where the language is ambiguous will this Court look to rules of construction for guidance and consider the reasonableness of proposed interpretations. *Albee v. Judy*, 136 Idaho 226, 231, 31 P.3d 248, 253 (2001).

Idaho Conservation League, Inc. v. Idaho State Dep't of Agric., 143 Idaho 366, 368, 146 P.3d 632, 634 (2006). "Moreover, unless a contrary purpose is clearly indicated, ordinary words will be given their ordinary meaning when construing

a statute.” *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 123 Idaho at 415, 849 P.2d at 88 (citing *Bunt v. City of Garden City*, 118 Idaho 427, 430, 797 P.2d 135, 138 (1990)). In construing a statute, this Court will not deal in any subtle refinements of the legislation, but will ascertain and give effect to the purpose and intent of the legislature, based on the whole act and every word therein, lending substance and meaning to the provisions. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990).

Further, “[b]ecause the construction and application of a legislative act are pure questions of law, this Court exercises free review over such questions. (Cite omitted.) The Court also exercises free review over constitutional issues as they, too, are purely questions of law. (Cite omitted.)” *Idaho State Ins. Fund v. Van Tine*, 132 Idaho 902, 905-906, 980 P.2d 566 (1999).

VI. ARGUMENT

A. Introduction

In this action below, Keene and Brown raised the issue of the City’s standing to challenge their eligibility to take office or remain in office. Keene and Brown asserted that the City did not have standing under I.C. § 34-2007 to contest their election. Keene and Brown also contended that the City did not have standing pursuant to I.C. § 6-602 to contest their eligibility to remain in office. In response to this issue, the City conceded that it did not have standing to bring an election challenge against Keene and Brown pursuant to Title 34, Idaho Code. It also acknowledged that it did not have standing to bring a proceeding pursuant to Title 6, Chapter 6 to have them removed from office. Instead, the City claimed it only sought a clarification of whether a vacancy existed in Keene and Brown’s office pursuant to the provisions of I.C. § 50-469 as a result of the cancellation of their voter registration for a short period of time.

The City maintained that the provisions of I.C. § 50-601 dictated that to be eligible to continue to hold the office of mayor after election, a person must remain a qualified elector throughout their term. Similarly, the City maintained that provisions of I.C. § 50-702 dictated to be eligible to continue to hold the office of councilman, a person must remain a qualified elector throughout their term. The City claimed that the cancellation of a voter registration was the equivalent of a failure to maintain the status of a qualified elector. R p. Since Keene's and Brown's voter registration was cancelled January 18, 2008, the City maintained that it was required to declare their office vacant pursuant to the provisions of I.C. § 50-469 due to the cancellation, claiming they were no longer eligible to continue in office, because they were not "qualified electors" upon cancellation of their voter registration. R p.

The trial court found I.C. § 50-469 to be ambiguous. R p. 72. After analysis of this statute in conjunction with I.C. §§ 50-601 and 50-702, the trial court found that the cancellation of Keene and Brown's voter registration for the period of January 18 through February 25, 2008 caused them to be ineligible to continue in office and created a vacancy in their office pursuant to I.C. §50-469. Keene and Brown appealed this determination.

B. The Trial Court erred in its Interpretation of I.C. §50-469

In its conclusions of law, the trial court held that I.C. § 50-601 and § 50-702 respectively, required mayors and councilmen to remain qualified electors during their terms of office. R p. 74, Finding 1. The trial court also found by operation of law that a vacancy was created when an elected person failed to remain a qualified elector during the term of office pursuant to the provisions of I.C. § 50-469. R p. 75, Finding 6. The trial court found that Keene and Brown were not registered voters from January 18, 2008 to February 25, 2008, and as such were not qualified electors during that period. R p. 75, Finding 8. In Conclusion 9, the trial court determined that appellants' failure to remain qualified electors during their respective

terms of office created a vacancy in their office. R. p. 75. In finding 10, the trial court declared vacancies existed pursuant to I.C. § 59-901(4), said vacancies to be filled by the existing City of Huetter acting mayor and council pursuant to I.C. § 50-469.

Idaho Code § 50-469 provides that: “If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and council.” The trial court indicated that a reading of the language of I.C. § 50-469 did not lead it to a clear and simple understanding of how the statute should be applied within the body of election law and proceeded to interpret it after acknowledging certain statutory rules of construction. R. p. 72. The trial court struggled with what the legislature intended by the phrase “fails to qualify”.

The trial court indicated that it was construing I.C. §§ 50-601 and 50-702 with I.C. § 50-469. The trial court observed that I.C. §§ 50-601 and 50-702 required a mayor or council person to remain a qualified elector throughout his term of office to remain eligible to hold the office. The trial court held that I.C. § 50-469 provided if a person elected fails to qualify, a vacancy shall be declared to exist. R. p. 73. Although the trial court did not specifically analyze the significance of its discussion of these two facts, it appears from the context of the entirety of the trial court’s decision that it equated an elected person’s failure to qualify prior to taking the oath of office with an incumbent public officer’s failure to remain eligible after election.

In interpreting statutes, this Court has held:

The objective in interpreting a statute or ordinance is to derive the intent of the legislative body that adopted the act. *Payette River Prop. Owners Ass’n*, 132 Idaho at 557, 976 P.2d at 483 (additional citations omitted). Such analysis begins with the literal language of the enactment. *Id.* Where the language is unambiguous, the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction. *Id.* An ordinance is ambiguous where reasonable minds might differ or be uncertain as to its meaning. *Id.* However, ambiguity is not present merely because the parties present differing interpretations to the court. *Id.*

Constructions that would lead to absurd or unreasonably harsh results are disfavored. *Id.* “Language of a particular section need not be viewed in a vacuum. And all sections of applicable statutes must be construed together so as to determine the legislature’s intent.” *Friends of Farm to Market Rd.*, 137 Idaho at 197, 46 P.3d at 14.

Spencer v. Kootenai County, ____ Idaho ____, ____ P.3d ____ (2008 WL 597661).

A statute should be interpreted in its entirety, including the way a Title or Chapter is enumerated. Justice Scalia has aptly characterized this approach. “Statutory construction . . . is a holistic endeavor. A provision . . . seen in isolation is often clarified by the remainder of the statutory scheme — because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” *United Savings Ass’n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988). Scalia’s approach was hardly novel. In 1850 Chief Justice Taney described the same process: “In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.” *United States v. Boisdoré’s Heirs*, 49 U.S. (8 How.) 113, 122 (1850). Thus, the meaning of a specific statutory directive may be shaped by the statute’s overall structure. Courts also look to the broader context of the body of law into which the enactment fits. *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 528 (1990).

The trial court found I.C. § 50-469 to be ambiguous and that it did not clearly express the intent of the legislative body. The trial court focused on the “fails to qualify” language in the statute and indicated it could not determine to which circumstances this language applied. The trial court did not discuss or analyze the entire section in statute.

Idaho Code § 50-469 discusses “if a person elected” fails to qualify, a vacancy shall be declared to exist. Idaho Code § 50-467 provides that the city shall make a declaration of the

person elected. It indicates that after canvassing the votes and determining the candidate receiving the highest number of votes shall be declared elected. Thus, the statute is not ambiguous. Further, I.C. § 50-469 does not provide that it applies to the circumstance that if a public officer becomes ineligible to hold office that a vacancy shall be declared to exist.

Even if I.C. § 50-469 were ambiguous, the trial court erred in its interpretation. The trial court failed to discuss the legislative intent of any of the statutes involved. In 1978, the legislature repealed and recodified the Idaho Municipal Election Laws. 1978 Session Law, Chapter 329, §§ 1, 2 (S.B. No. 1460). The Statement of Purpose prepared by the Representative committee (RS 3135) indicated, “[t]he purpose of this act is to simplify and clarify the conduct of city elections by incorporating all existing statutes into one section of the code. In addition to clarification and simplification the act places election procedures in sequence of time and conduct by the city.”³

The trial court held I.C. § 50-469 was intended to address the circumstances existing here where it was alleged that an incumbent became ineligible to hold office due to a failure to maintain status as a qualified elector. This holding is not supported by the legislative intent contained in the Statement of Purpose. The Statement of Purpose clearly indicates the act is designed to simplify and clarify the conduct of city elections. The removal of an incumbent from office due to ineligibility arising after the election is not related to the conduct of the city election.

Further, the Statement of Purpose indicated the election procedures were placed in sequence of time and conduct of the election by the city. A review of Title 50, Chapter 4 confirms this statement.

³ The Session Law and legislative history is attached as Addendum A to this brief.

Further, the trial court ignored the pattern to the statutory scheme under consideration. As to the statutory provisions closest in sequence to I.C. § 50-469, I.C. § 50-467 addresses canvassing the votes and declaring the person(s) elected to office. Idaho Code § 50-468 addresses tossing a coin to determine the winner when there is a tie between candidates. The statute immediately following I.C. § 50-469 addresses preparing and presenting a certificate of election to each elected city official at the time of the elected person subscribes to and takes the oath of their office. I.C. § 50-470. Idaho Code § 50-469, lying between these steps, provides for declaring a vacancy when a person elected “fails to qualify”. Given the legislative intent expressed in the purpose of the statute, it is clear that the statute was intended to address the circumstance where an individual was declared elected but failed to qualify prior to taking their oath and receiving their certificate of election. The trial court rejected this interpretation of the statute.

In rejecting this interpretation, the trial court examined the holding in *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917). In the *Clark* case, the individual elected as county assessor died after being elected, but prior to taking the oath of office or filing the required bond. The county commissioners filled the vacancy by appointment of an assessor. The incumbent assessor claimed he continued to hold the office.

The statute then existing, Section 32a, Rev. Code, provided that every officer elected for a fixed term shall hold office until his successor was elected *and qualified*. The trial court in the present action correctly noted that the holding of *Clark* was that no vacancy was created under Section 32a, Rev. Code, when a successor to an office was elected; but failed to qualify (i.e. was unable to take an oath of office) prior to beginning his term of office, if the incumbent was still in office when the elected officer failed to qualify. However, the trial court erred when it concluded that the *Clark* holding stood for the proposition that there could not be a

vacancy in an office as a result of a failure to qualify (i.e., inability to take the an oath of office) prior to beginning the term of office.

What the trial court failed to appreciate in its analysis was that the *Clark* holding was based upon interpretation of Section 32a, Rev. Code, and was controlled by the express language of that statute. This language still exists in part in our current statutory scheme. Idaho Code § 67-303 provides in relevant part that, “Every officer elected or appointed for a fixed term shall hold office until his successor is elected or appointed and qualified, *unless the statute under which he is elected or appointed expressly declares the contrary.*” (Emphasis added.) The emphasized portion of the statute was not included in Section 32a, Rev. Code. The trial court erred when it did not analyze the import of this additional language not considered in the *Clark* holding.

The statutes under which city officers are elected does expressly declare a contrary rule to the general provisions of I.C. § 67-303. Idaho Code § 50-469 expressly provides that a vacancy shall be declared to exist when the person elected for the office fails to qualify prior to taking the oath of office and receiving his certificate of election. Thus, the trial court erred when it found that I.C. § 50-469 was not intended to address a vacancy created by a failure by an elected person to qualify for office prior to taking his official oath as required by I.C. § 59-401.

C. The Trial Court Erred in Determining that I.C. § 50-469 Created a Third Method of Contesting the Eligibility of a Person to Hold Office.

Statutes that are *in pari materia*, i.e., relating to the same subject, must be construed together to give effect to legislative intent. *Paolini v. Albertson's Inc.*, 143 Idaho 547, 549, 149 P.3d 822, 824 (2006). The trial court held that I.C. § 50-469 “has created at least a third way of reaching the ineligibility of a person to hold office.” R p. 70. In so holding, the trial court

erred as a matter of law and did not construe statutes relating to the same subject *in pari materia*.

The present matter is a contest of Keene's right to hold office. Although the City contended in this matter that it did not know whether Keene and Brown were in fact qualified electors when petitioning for declaratory judgment, it conceded it lacked standing to challenge the election of Keene and Brown on grounds of ineligibility arising at the time of election. On that basis, the trial court found that I.C. § 34-2007 was inapplicable to its analysis. Although I.C. § 34-2001 was not the basis of the City of Huetter's contest of Keene's right to retain office, it was relevant for the trial court to consider it in its statutory analysis to determine the legislature's intent and construe the statutes *in pari materia*.

Idaho Code § 50-601 contains provisions for eligibility for two distinct periods of eligibility. The first is, determined at the time a declaration of candidacy is submitted to the city clerk (pre-election). The second is determined during the term of office (post-election). The trial court focused only on the *post-election* eligibility requirement, finding that failure to comply with the post-election eligibility requirements of I.C. § 50-601 created a vacancy in office pursuant to the provisions of I.C. § 50-469.

Were the trial court to have considered the extension of its construction of I.C. § 50-469 to the pre-election eligibility period, it would have recognized that its holding supplanted the provisions of I.C. §§ 34-2001, 34-2007 and 34-2008. According to the trial court's construction of I.C. § 50-469, a vacancy can be declared for any failure to meet the requirements of I.C. § 50-601, including the pre-election phase. Thus, the City could declare an incumbent's office vacant for . failure of the incumbent to be eligible to take office at the time of the election This result is contrary to Title 34, Chapter 20. Idaho Code § 34-2001(2) allows a challenge for failure of the incumbent to be eligible to take office at the time of the

election. Idaho Code § 34-2007 limits standing to contest of an election to electors of the city. The action must be brought within twenty (20) days of the canvass. I.C. § 34-2008.

Under the trial court's interpretation of I.C. § 50-469, the provisions Chapter 34, Title 20 would no longer control. Under the trial court's third cause of action concept, a vacancy could be declared for failure to qualify at the time of taking office, apparently by anyone, including the City, at any time. This result does not give effect to Title 34, Chapter 20 as required by the rules of statutory construction.

Further, the trial court did not properly analyze the interpretation of Title 6, Chapter 6 in its statutory construction. There is no dispute in this matter that the City is contesting Keene's authority to hold office based upon a claim that he was ineligible for a period of time to hold office as a consequence of the cancellation of his voter registration.

The trial court acknowledged that I.C. § 6-602 provided a method for contesting an election when it is claimed that any person holds any office without authority of law. The trial court also acknowledged that according to the holding of *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908) that the predecessor statutes of Title 34, Chapter 20 and Title 6, Chapter 6 provided the only two methods to contest a public officer's eligibility to hold office. Yet despite this acknowledgement, the trial court inexplicably concluded that Idaho Code § 6-602 was inapplicable to the City's contest of Keene's eligibility to hold his office.

Even more alarming, the trial court held the holding in *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908) was only good law up until 1978 when I.C. § 50-469 was enacted. The trial court reasoned that the implementation of I.C. § 50-469 was intended by the legislature to create a third mechanism for contesting a public officer's eligibility to hold office. The trial court cited to no authority for this holding.

In fact, the legislative history shows that Title 50 was merely an incorporation and recodification of existing statutes into the code, as well as an opportunity taken to place the sections into sequence of time and conduct of the election process by the City. Further, the trial court's conclusion that the analysis contained in *Toncray* was modified by the passage of I.C. § 50-469 is likewise not supported by law. Thus, the trial court's conclusion that the enactment of I.C. § 50-469 was intended to create a third mechanism for contesting a public officer's eligibility to hold office is error.

The trial court refused to acknowledge in its decision that I.C. §6-602 controls the current contest of Keene's authority under law to hold office. The trial court indicated that proceedings under I.C. § 6-602 are brought on behalf of the people by the prosecuting attorney for usurpation of office. This analysis ignored those portions of I.C. § 6-602 that also address that it covers contests against individuals who hold or exercise the right to office without authority of law. Idaho Code § 6-602 is not limited in scope to a usurpation of office as found by the trial court.

The trial court did not categorize the current contest of Keene's right to hold office as falling within the category of a contest based upon a claim that Keene held office without authority of law. However, the trial court's opinion is replete with analysis as to why Keene holds the office without authority of law based upon its interpretation of I.C. §§ 50-570 and 50-601. Thus, this contest is exactly the type of action covered under I.C. § 6-602.

In fact, a similar contest was brought in *People ex. Rel. Neilson v. Wilkins*, 101 Idaho 394, 614 P.2d 417 (1980) wherein an action was brought pursuant to I.C. § 6-602 seeking removal of the public officer for failure to meet the eligibility requirement of residency within the electoral district. Although this matter involved was a different prong of the eligibility requirement (residency as opposed to registration), it encompassed the same overall eligibility

requirements. The trial court dismissed the suit on other grounds, noting that an I.C. § 6-602 action applies only to eligibility conditions existing at the time the action was brought.

The trial court erred when it concluded that I.C. § 50-469 was intended to create a third mechanism for contesting a public officer's right to hold office. Further, it erred when it held that I.C. § 6-601 had no applicability to the present case, and the City had standing to contest Keene's right to hold office. Further, the trial court erred in not looking at Keene's eligibility based upon conditions existing at the time the suit was filed.

D. The Trial Court Erred when it Determined that Keene Became Ineligible to Hold Office as a Result of the Cancellation of his Voter Registration on January 18, 2008.

In its decision, the trial court discussed the requirements of I.C. §§ 50-601 and 50-702, noting they had the same language that required the office holder to remain a qualified elector during his term of office. R p. 73. The trial court characterized the issue in this case as whether Keene and Brown, after taking office, became "unqualified electors" due to the cancellation of their voter registration on January 18, 2008. R p. 70.

Nothing in the statute or applicable constitutional provisions discusses or defines an "unqualified elector." The trial court appears to have reached the conclusion that this is the proper inquiry in the current contest by its extension of the holding in *Clark v. Wonnacott, supra*. The trial court observed that the holding of *Clark v. Wonnacott, supra*, was that an incumbent held his office until his successor was both elected and qualified, i.e. sworn into office. R p. 73. The trial court concluded that "[t]he logic of this holding implies that if a successor is elected and qualified, thus terminating any incumbency, and subsequently during his term of office becomes unqualified, a vacancy is created." R p. 73-74. (Emphasis added.) This logic is subject to attack on several fronts.

First, this case involves the construction of particular statutes. The outcome is dictated by the terms of the statutes rather than an implication that case law left a gap in the statutory scheme established by the legislature. Thus, it was improper for the trial court to consider the implication from a case in construing the applicable statutes. The trial court erred when it did not limit its inquiry to the interpretation of the statutes as written, or if ambiguous, based upon the intent of the legislature.

Next, there is no such concept in the statutes as an “unqualified” public officer as implied by the trial court. Idaho Code Title 34, Chapter 20 provides a mechanism to contest a public officer remaining in office when they were not eligible to hold office at the time of election. Idaho Code § 6-602 provides for a contest to a public officer’s right to continue in office when they have become ineligible to hold office and continue in office without authority of law, i.e. when they are ineligible to hold the position.

Finally, the trial court erred when it held that the cancellation of Keene’s voter registration on January 18, 2008 was the equivalent of changing his status to that of an unqualified elector. Deedie Beard, election manager, testified at trial that Keene and Brown were challenged at the polls and took the elector’s oath as required by I.C. § 34-1111. Consequently, Keene and Brown were then entitled to vote in the election pursuant to I.C. § 34-1111. Despite Keene’s and Brown’s entitlement to vote in the election, the City contends in this contest that the cancellation of Keene’s voter registration over two months after the election was tantamount to a loss of the status of qualified elector during his term of office. R p. 6-7; 41.

The determination of this issue turns upon the definition of a qualified elector as established in the relevant constitutional provisions and statutes. Article VI, § 2 of the Idaho Constitution defines the qualifications of an elector. This constitutional provision provides that

“[e]very male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where he or she offers to vote for the period provided by law, if registered as provided by law, is a qualified elector.” Article VI, § 3 of the Idaho Constitution disqualifies certain persons to vote who have been convicted of a felony, and who have not been restored to the rights of citizenship, or who, at the time of such election, are confined in prison on conviction of a criminal offense.

The issue in this contest was whether Keene was ineligible to continue to hold office, because he was not a qualified elector due to the cancellation of his registration on January 18, 2008. There is no issue that he was a disqualified person under Article VI, § 3. Rather, the issue is whether the cancellation of his voter registration from January 18 through February 25, 2008 was the equivalent of not being a qualified elector. Although there is no law that requires an elector be continuously registered to be a qualified elector in upcoming elections, the trial court held that cancellation of an incumbent’s voter registration was automatically the equivalent of failing to maintain the status of a qualified elector and allowed the incumbent’s office to be declared vacant pursuant to I.C. § 50-469. Keene challenges this holding on appeal.

Any discussion of this issue must commence with an examination of the statutes that define the requirements for a qualified elector. Idaho Code § 34-104 defines a qualified elector as meaning “any person who is eighteen (18) years of age, is a United States citizen and who has resided in this state and in the county at least thirty (30) days next preceding the election at which he desires to vote, and who is registered as required by law.” Similarly, I.C. § 34-402 provides that: “Every male or female citizen of the United States, eighteen (18) years old, who has resided in this state and in the county for thirty (30) days where he or she offers to vote prior to the day of election, if registered within the time period provided by law, is a qualified

elector.” Along these same lines, I.C. § 50-402(c) provides in relevant part that “[a] ‘qualified elector’ means any person who is eighteen (18) years of age, is a United States citizen and who has resided in the city at least thirty (30) days next preceding the election at which he desires to vote and who is registered within the time period provided by law.”

Thus, the issue in this matter narrows to whether Keene was registered as required by law. It is not disputed that Keene and Brown were registered prior to the November 6, 2007 election. Regarding the November 6, 2007 election, Deedie Beard, election manager, testified that when Keene and Brown were challenged at the polls, they took the oath of office. Consequently, Keene and Brown were allowed to vote. I.C. § 34-1111. Thus, they were qualified electors in the November 6, 2007 election in which they were elected.

In January 18, 2008, Keene and Brown’s voter registration was cancelled. They were not re-registered until February 25, 2008. Nothing in the applicable statutes made the cancellation effective prior to the actual cancellation date. The January 18, 2008 registration cancellation was inconsequential to Keene and Brown’s status as qualified electors at the time they were elected. Therefore, the inquiry evolves to *what, if any, effect the cancellation of Keene’s registration had on his eligibility to continue to hold office as an incumbent.*

To be a qualified elector, Keene was required to be registered as provided by law. The trial court held that the law required a continuous registration to be a qualified elector. There is no statutory provision that requires a person who desires to vote in future elections to be registered at all times prior to the election.

The law definitely requires registration prior to an election. Idaho Code § 34-404, addressing registration of electors, provides that: “All electors must register before being able to vote at any primary, general, special, school or any other election governed by the provisions of title 34, Idaho Code. Registration of a qualified person occurs when a legible, accurate and

complete registration card is received in the office of the county clerk or is received at the polls pursuant to section 34-408A, Idaho Code.” However, the law does not require continuous, uninterrupted registration to be a qualified elector. Idaho Code § 34-408 provides that a person is precluded from registering within twenty-four (24) days preceding any election held throughout the county in which he resides for the purpose of voting at such election.

Ms. Beard testified there were no elections pending when Keene’s registration was cancelled, nor were there any pending elections at the time he was re-registered. Tr p. 21, L. 23-25; p. 22, L. 1-13. To be a qualified elector, Keene was required to be registered as provided by law prior to an election. Since there were no pending elections, the cancellation of Keene’s voter registration was inconsequential.

VII. ATTORNEY FEES

Idaho Code § 6-606 awards damages to a person whose right to office has been usurped. Keene requests his attorney fees and costs incurred in this appeal.


VII. CONCLUSION

The City of Huetter argued below that the trial court should interpret I.C. § 50-469 in a manner that allowed city officials to determine that a person elected failed to qualify for office at the time of election or subsequently failed to qualify to continue in office and to declare that a vacancy exists when the city official(s) deem that one of these two instances had occurred. The trial court agreed with the City’s interpretation and held I.C. § 50-469 was intended to create a third method for contesting a public officer’ right to hold office. Such a holding implicitly repealed I.C. § 34 2001 (contest of an election when the incumbent was not eligible to the office at the time of the election) and I.C. § 6-602 (removal from office due to ineligibility). These statutes would no longer have force or effect under the holding of the trial

court, because a city official could declare the office vacant upon determining there was a failure to qualify for the office. This result is contrary to rules of statutory construction and interpretation. Further, it was not the intent of the legislature in enacting a statute intended to address the circumstance when a person is declared elected and fails to qualify for the office prior to taking the oath of office and being installed as a public officer. Thus, the trial court's decision should be reversed on appeal.

RESPECTFULLY SUBMITTED this 26TH day of June, 2009.

JAMES, VERNON & WEEKS, P.A.



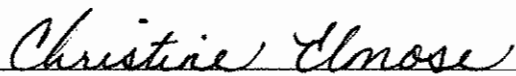
SUSAN P. WEEKS
Attorneys for Defendant/Appellant Keene

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Arthur Macomber
Macomber Law, PLLC
408 E. Sherman Avenue, Ste. 215
Coeur d'Alene, ID 83814

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|-------------------------------------|----------------|
| <input checked="" type="checkbox"/> | U.S. Mail |
| <input type="checkbox"/> | Hand Delivered |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Telecopy (FAX) |



ADDENDUM A

Legislative History

necessary for a final determination of the proceedings. All proceedings on the hearing shall be held in accordance with the rules governing civil actions. The district court may take additional evidence on any issue and may, if necessary, defer the case for such further evidence to be taken by the director of the department of water resources as the court may direct, and may require a further determination by the director of the department of water resources. Upon conclusion of the hearing the district judge shall determine the nature of each right where a notice of objection has been filed and enter a decree accordingly. Where no objection is filed with regard to any right found to exist by the director of the department of water resources as evidenced by his report, the district judge shall affirm the right as therein found. The decree shall in every case declare as to the water rights adjudged to each party, the priority, amount, season of use, purpose of use, point of diversion and place of use of the water and acreage of the tract of land to which the water right is appurtenant, together with such other facts as may be necessary to define the right.

Approved March 29, 1978.

CHAPTER 329

(S.B. No. 1460, As Amended)

AN ACT

RELATING TO MUNICIPAL ELECTIONS; REPEALING CHAPTER 4, TITLE 50, IDAHO CODE; AMENDING TITLE 50, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 50, IDAHO CODE, TO PROVIDE THE IDAHO MUNICIPAL ELECTION LAW; PROVIDING SHORT TITLE; PROVIDING DEFINITIONS; PROVIDING SUPERVISION OF ELECTION LAWS BY THE CITY CLERK; PROVIDING POWERS OF THE CITY CLERK; REQUIRING OFFICE OF THE CITY CLERK TO BE OPEN SO LONG AS THE POLLS ARE OPEN; PROVIDING APPEALS BY AGGRIEVED PERSONS; PROVIDING FOR ESTABLISHMENT OF ELECTION PRECINCTS; PROVIDING FOR DESIGNATION OF POLLING PLACES; PROVIDING FOR APPOINTMENT AND COMPENSATION OF ELECTION JUDGES AND CLERKS; PROVIDING FOR CHALLENGERS AND WATCHERS; PROVIDING THAT ELECTORS ARE PRIVILEGED FROM ARREST DURING ATTENDANCE AT POLLING PLACES WITH EXCEPTIONS PROVIDED; SPECIFYING CERTAIN PERSONS DISQUALIFIED FROM VOTING; SPECIFYING QUALIFICATION OF ELECTORS; REQUIRING REGISTRATION OF ELECTORS; PROVIDING CONDITIONS FOR GAIN OR LOSS OF RESIDENCE; PROVIDING THAT THE CITY CLERK IS REGISTRAR; PROVIDING TIME LIMIT FOR CLOSING OF REGISTER; REQUIRING CITY CLERK'S OFFICE TO REMAIN OPEN CERTAIN HOURS ON FINAL DAY FOR REGISTRATION; PROVIDING FOR ABSENTEE REGISTRATION; PROVIDING APPLICATION FOR REGISTRATION; PROVIDING QUALIFICATION FOR REGISTRATION; PROVIDING FOR REREGISTRATION OF ELECTOR WHO CHANGES RESIDENCE; PROVIDING REGISTRATION CARDS PROVIDING CONDITIONS UNDER WHICH REREGISTRATION IS REQUIRED; PROVIDING TRANSFER OF REGISTRATION; PROVIDING FOR CHANGE OF NAME AFTER REGISTER IS CLOSED; PROVIDING CHALLENGES TO THE ENTRIES IN ELECTION REGISTER; PROVIDING THE CONTENTS OF THE COMBINATION ELECTION REGISTER AND POLL BOOK; PROVIDING FOR THE ELECTION RECORD AND POLL BOOK; PROVIDING DATES FOR THE GENERAL AND SPECIAL CITY ELECTIONS; PROVIDING METHOD OF NOMINATION; PROVIDING FORM OF PETITION FOR DECLARATION OF CANDIDACY; PROVIDING THE TIME AND MANNER OF FILING THE PETITION; PROHIBITING SIGNATURES ON MORE THAN ONE NOMINATING PETITION; PROVIDING FOR REVOCATION OF SIGNATURE; PROVIDING PRESERVATION OF NOMINATING FORMS; PROVIDING NOTICE OF ELECTION AND SPECIFYING CONTENT; SPECIFYING THE OFFICIAL ELECTION STAMP; REQUIRING BALLOTS AND ELECTION SUPPLIES TO BE PROVIDED; PROVIDING FOR PREPARATION AND CONTENT OF THE BALLOT; PROVIDING FOR SAMPLE BALLOTS; PROVIDING

PROCEDURE FOR CORRECTION OF BALLOTS AFTER PRINTING; PROVIDING FOR ABSENTEE BALLOTS; PROVIDING APPLICATION FOR ABSENTEE BALLOTS; PROVIDING CLASSIFICATIONS OF ABSENTEE ELECTOR'S BALLOT; PROVIDING ISSUANCE OF ABSENTEE BALLOT; SPECIFYING MARKING AND FOLDING OF ABSENTEE BALLOT; PROVIDING RETURN OF ABSENTEE BALLOT; REQUIRING ABSENTEE ELECTOR'S VOTING PLACE; PROVIDING TRANSMISSION OF ABSENTEE BALLOTS TO POLLS; PROVIDING DEPOSIT OF ABSENTEE BALLOTS; PROVIDING DUTIES OF CITY CLERK ON ELECTION DAY; PROVIDING TIME FOR OPENING AND CLOSING POLLS; PROVIDING FOR CHANGING POLLING PLACE; PROVIDING FOR OPENING BALLOT BOXES; AUTHORIZING JUDGES TO ADMINISTER OATHS OR CHALLENGE AN ELECTOR; PROVIDING DUTIES OF CONSTABLE; PROVIDING PROCEDURE FOR SIGNING COMBINATION ELECTION RECORD AND POLL BOOK; SPECIFYING MANNER OF VOTING; SPECIFYING METHOD OF ASSISTING VOTER; PROVIDING DISPOSITION OF SPOILED BALLOTS; PROHIBITING OFFICERS FROM DIVULGING INFORMATION; PROVIDING CANVASS OF THE VOTE; PROVIDING COMPARISON OF POLL LISTS, BALLOTS AND REGISTRATION CARDS; PROVIDING COUNTING OF THE BALLOTS; PROVIDING TRANSMISSION OF SUPPLIES TO CITY CLERK; PROVIDING CANVASSING OF VOTE AND DETERMINATION OF RESULTS OF THE ELECTION; PROVIDING PROCEDURE IN THE EVENT OF A TIE VOTE; SPECIFYING PROCEDURE IN THE EVENT OF FAILURE TO QUALIFY FOR OFFICE; PROVIDING FOR CERTIFICATES OF ELECTION; PROVIDING FOR APPLICATION TO RECOUNT BALLOTS; PROVIDING APPLICATION OF CHAPTER 71, TITLE 34, IDAHO CODE, TO RECALL ELECTIONS; PROVIDING FOR INITIATIVE AND REFERENDUM ELECTIONS; PROVIDING FOR VOTING BY MACHINE OR VOTE TALLY SYSTEM; PROVIDING APPLICATION OF CRIMINAL PROVISIONS; PROVIDING FOR ADOPTION OF JOINT REGISTRATION PROCEDURES; AND PROVIDING SEVERABILITY.

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

SECTION 1. That Chapter 4, Title 50, Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Title 50, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 4, Title 50, Idaho Code, and to read as follows:

50-401. SHORT TITLE. Chapter 4, Title 50, Idaho Code, shall be known and cited as the "Idaho Municipal Election Laws."

50-402. DEFINITIONS. The following words and phrases

when used in this chapter, have the meanings respectively given herein.

(a) General election. "General election" means the election held on the first Tuesday succeeding the first Monday in November in each odd-numbered year at which there shall be chosen all mayors and councilmen as are by law to be elected in such years.

(b) Special election. "Special election" means any election other than a general election held at any time for any purpose provided by law.

(c) Qualified elector. A "qualified elector" is any person who is eighteen (18) years of age, is a United States citizen and who has become a bona fide resident of the city prior to the election at which he desires to vote and who is registered within the time period provided by law.

(d) Residence.

(1) "Residence" for voting purposes shall be the place in which a qualified elector has fixed his habitation and to which, whenever he is absent he has the intention of returning.

(2) A qualified elector shall not be considered to have gained residence in any city of this state into which he comes for temporary purposes only without the intention of making it his home but with the intention of leaving it when he has accomplished the purpose that brought him there.

(3) A qualified elector who has left his home and gone to another area outside the city, for a temporary purpose only shall not be considered to have lost his residence.

(4) If a qualified elector moves outside the city, with the intentions of making it his permanent home, he shall be considered to have lost his residence in the city.

(e) Election official. "Election official" means the city clerk, registrar, judge of election, clerk of election, constable engaged in the performance of election duties as required by this act.

(f) Election register. The "election register" means the voter registration cards of all electors who are qualified to appear and vote at the designated polling places.

(g) Combination election record and poll book. "Combination election register and poll book" is the book containing a listing of registered electors who are qualified to appear and vote at the designated polling places.

(h) Tally book. The "tally book" or "tally list" means the forms in which the votes cast for any candidate or special question are counted and totaled at the polling precinct.

(i) Reference to male. All references to the male elec-

In no event shall the results of such count be released to the public until after 8 p.m. of election day.

50-466. TRANSMISSION OF SUPPLIES TO CITY CLERK. After the counting of the votes, the judges of the election shall enclose and seal the combination election record and poll book, tally books, all ballot stubs, unused ballot books, and other supplies in a suitable container and deliver them to the city clerk's office. If the office of the city clerk is closed, the articles shall be delivered to the police department who shall deliver them to the city clerk no later than the day after the election.

50-467. CANVASSING VOTES -- DETERMINING RESULTS OF ELECTION. The mayor and the council, within six (6) days following any election, shall meet for the purpose of canvassing the results of the election. Upon acceptance of tabulation of votes prepared by the election judges and clerks, and the canvass as herein provided, the results of both shall be entered in the minutes of proceedings and proclaimed as final. Results of election shall be determined as follows: in the case of a single office to be filled, the candidate with the highest number of votes shall be declared elected; in the case where more than one office is to be filled, that number of candidates receiving the highest number of votes, equal to the number of offices to be filled, shall be declared elected.

50-468. TIE VOTES. In case of a tie vote between candidates, the city clerk shall give notice to the interested candidates to appear before the council at a meeting to be called within six (6) days at which time the city clerk shall determine the tie by a toss of a coin.

50-469. FAILURE TO QUALIFY CREATES VACANCY. If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.

50-470. CERTIFICATES OF ELECTIONS. A certificate of election for each elected city official or appointee to fill such position shall be made under the corporate seal by the city clerk, signed by the mayor and clerk, and presented to such officials at the time of subscribing to the oath of office.

50-471. APPLICATION FOR RECOUNT OF BALLOTS. Any candidate desiring a recount of the ballots cast in any general city election may apply to the attorney general therefor,

within twenty (20) days of the canvass of such election by the city council. The provisions of chapter 23, title 34, Idaho Code, shall govern recounts of elections held under this chapter.

50-472. RECALL ELECTIONS. Recall elections shall be governed by the provisions of chapter 17, title 34, Idaho Code, except as those provisions may be specifically modified by the provisions of this chapter.

50-473. INITIATIVE AND REFERENDUM ELECTIONS. Initiative and referendum elections shall be governed by the provisions of chapter 18, title 34, Idaho Code, and chapter 5, title 50, Idaho Code, except as those provisions are specifically modified by this chapter.

50-474. VOTING BY MACHINE OR VOTE TALLY SYSTEM. Any city may use voting machines or vote tally system in conduct of elections. A city voting by machine shall be governed by the provisions of chapter 24, title 34, Idaho Code.

50-475. ELECTION LAW VIOLATIONS. The provisions of chapter 23, title 18, Idaho Code, pertaining to crimes and punishments for election law violations are hereby incorporated in this chapter.

50-476. ADOPTION OF STATE REGISTRATION PROCEDURES -- JOINT REGISTRATION. Any municipal corporation or political subdivision of the state of Idaho which is, or may be, required to conduct elections may, upon resolution of its governing body, elect to conform its practices for registration of qualified electors to those contained in title 34, Idaho Code. If the governing body approves such a resolution, it shall conform its practices in such a way that registration for general elections shall be a sufficient registration for elections of the municipal corporation or political subdivision, and vice versa. For the purposes of this act, registration forms may be expanded to include such information as may be required to establish qualification of electors. The original of each registration form, when joint registration is adopted, shall be forwarded to the county clerk wherein the registrant resides, and a copy shall be retained by the municipal corporation or political subdivision conducting the registration.

SECTION 3. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

Approved March 29, 1978.

(1978)

S1460

RS 3135

STATEMENT OF PURPOSE

The purpose of this act is to simplify and clarify the conduct of city elections by incorporating all existing statutes into one section of the code. In addition to clarification and simplification the act places election procedures in sequence of time and conduct by the city.

This bill is submitted at the request of the Association of Idaho Cities.

FISCAL NOTE

There would be no fiscal impact on city government as a result of enactment of this bill.

3/2 2nd rdg - to 3rd rdg
3/3 3rd rdg - PASSED - 69-1-0
NAYS-Winchester
ABSENT-0
Title apvd - to Senate
3/4 To enrol
3/6 Rpt enrol - Pres signed
3/7 Sp signed
3/8 To Governor
3/13 Governor signed
Session Law Chapter 87
Effective: July 1, 1978

S1460aa ELECTIONS - Repeals and adds to existing law to provide a municipal election law.
By-----Local Government & Taxation

2/2 Senate intro - 1st rdg - to printing
2/3 Rpt prt - to Loc Gov
2/21 Rpt out - to 14th Ord
3/2 Rpt out amen - to engros
3/4 Rpt engros - to 1st rdg as amen
1st rdg - to 2nd rdg as amen
3/6 2nd rdg - to 3rd rdg as amen
3/7 3rd rdg as amen - PASSED - 31-3-1
NAYS - Batt, Risch, Steen
ABSENT - Watkins
Title apvd - to House
3/8 House intro - 1st rdg - to Loc Gov
3/13 Rpt out - rec d/p - to 2nd rdg
2nd rdg - to 3rd rdg
3/14 3rd rdg - PASSED - 68-0-2
NAYS-0
ABSENT-Hollifield, Worthen
Title apvd - to Senate
3/14 To enrol
3/15 Rpt enrol - Pres signed
3/16 Sp signed
3/17 To Governor
3/29 Governor signed
Session Law Chapter 329
Effective: July 1, 1978

S1461aah REHABILITATION - Adds and repeals existing law to establish the Rehabilitation Division under the Industrial Commission.
By-----Commerce & Labor

2/2 Senate intro - 1st rdg - to printing
2/3 Rpt prt - to Comm/Lab
2/22 Rpt out - rec d/p - to 2nd rdg
2/23 2nd rdg - to 3rd rdg
2/24 3rd rdg - PASSED - 34-1-0
NAYS-Yarbrough
ABSENT-0
Title apvd - to House
2/27 House intro - 1st rdg - to Bus
3/4 Rpt out - rec d/p - to 2nd rdg
3/6 2nd rdg - to 3rd rdg
3/8 To Gen Ord
3/11 Rpt out amen - to 1st rdg as amen
3/13 1st rdg - to 2nd rdg as amen
3/14 2nd rdg - to 3rd rdg as amen
3/15 3rd rdg as amen - PASSED 66-3-1
NAYS-Kendell, Ungricht, Winchester
ABSENT-Chatburn
Title apvd - to Senate
3/16 Senate rec'd - to Comm/Lab
Rpt out - to 10th Ord
3/17 Senate concur in House amens
Rls susp - PASSED - 33-0-2
NAYS-0
ABSENT-Egbert, Van Engelen
Title apvd - to engros/enrol
3/17 Rpt engros/enrol - Pres signed
3/18 Sp signed - to Governor
3/29 Governor signed

Session Law Chapter 273
Effective: March 29, 1978

S1462 SCHOOLS - Amends existing law to allow cooperative service agencies to be reimbursed for salaries to ancillary personnel for educational purposes.
By-----Health, Education & Welfare

2/2 Senate intro - 1st rdg - to printing
2/3 Rpt prt - to HEW

S1463 INSURANCE - Adds to existing law to require insurance benefits for services by clinical psychologists.
By-----Health, Education & Welfare

2/2 Senate intro - 1st rdg - to printing
2/3 Rpt prt - to HEW

S1464ah MOTOR VEHICLES - Adds to existing law to prohibit certain acts concerning identification numbers on motor vehicles.
By-----Judiciary & Rules

2/3 Senate intro - 1st rdg - to printing
2/6 Rpt prt - to Jud
2/23 Rpt out - rec d/p - to 2nd rdg
2/24 2nd rdg - to 3rd rdg
2/27 3rd rdg - PASSED - 34-0-1
NAYS-0
ABSENT-Brassey
Title apvd - to House
2/28 House intro - 1st rdg - to Jud
3/14 Rpt out - to Gen Ord
Rpt out amen - to 1st rdg as amen
1st rdg - to 2nd rdg as amen
3/15 2nd rdg - to 3rd rdg as amen
3/16 3rd rdg as amen - PASSED - 60-7-3
NAYS-Fitz, Gould, Harlow, Jones, McDermott, Reid, Winchester
ABSENT-Reardon, Sallaz, Snyder
Title apvd - to Senate
3/16 Senate 10th Ord
3/17 Senate concur in House amens
Rls susp - PASSED - 34-0-1
NAYS-0
ABSENT-Van Engelen
Title apvd - to engros/enrol
3/17 Rpt engros/enrol - Pres signed
3/18 Sp signed - to Governor
3/29 Governor signed
Session Law Chapter 339
Effective: July 1, 1978

S1465 CIVIL ACTIONS - Adds to existing law to allow renewal of judgments in civil actions.
By-----Judiciary & Rules

2/3 Senate intro - 1st rdg - to printing
2/6 Rpt prt - to Jud
2/17 Rpt out - rec d/p - to 2nd rdg
2/20 2nd rdg - to 3rd rdg
2/21 3rd rdg - PASSED - 33-1-1
NAYS-Merrill
ABSENT-Steen
Title apvd - to House
2/22 House intro - 1st rdg - to Jud
3/2 Rpt out - rec d/p - to 2nd rdg
3/3 2nd rdg - to 3rd rdg
3/6 3rd rdg - PASSED - 67-1-2
NAYS-Munger
ABSENT-Bateman, Kendell
Title apvd - to Senate

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1978 DAILY DATA FINAL

(SENATE)

LOCAL GOVERNMENT AND TAXATION COMMITTEE

FEBRUARY 1, 1978
9:00 am
Room 430

ROLL CALL All committee members were present.

RULES AND REGULATIONS ASSIGNMENTS

The chairman assigned Senators to discussion committees to review the Rules and Regulations of the Tax Commission. The assignments are attached.

RS 3135

The purpose of this act is to simplify and clarify the conduct of city elections by incorporating all existing statutes into one section of the code. In addition to clarification and simplification the act places election procedures in sequence of time and conduct by the city.

The proposed legislation is submitted at the request of the Association of Idaho Cities.

MOTION

Senator Black moved and Senator Crystal seconded the motion that RS 3135 be introduced. The motion passed unanimously.

SB 1356
as amended

The legislation amends existing law to provide that actual use shall determine value for ad valorem tax purposes.

The chairman told the committee that the amendment before them was a compromise; the amendment does not carry his original intent, but as the sponsor of the bill he was willing to accept it.

Senator Bradshaw, sub-committee co-chairman also spoke to the amendment reaffirming that it was the only agreement that could be met between the AIC, IAC, and interested county elected officials.

DISCUSSION

The chairman asked for interested parties to express their opinions to SB 1356 as amended.

Senators Black and McCann were concerned about the appraisal of vacant lots; Senator Hartvigsen expressed concern that the work "functional" should be included; Senator Klein cautioned the intent forced a property owner to develop land of more than one acre and that exemptions were a better way to handle the tax problem.

FLOYD DECKER
AIC


Mr. Decker spoke in opposition to the amendment suggesting that the exemption approach be used; the word "the" be changed to "a"; the word "functional" be left out; clarifying the intent to indicate there is no tax shift; define the appraisal of vacant lots, i.e. "that requires appraisal approach methods and techniques in addition to actual use may be used to determine the market value of vacant and or unused property.

ROLL CALL All committee members were present.

SB 1357 The legislation repeals and amends existing law to delete the requirement that property be assessed at 20% of market value for the purpose of taxation for school districts.

Senator Judd spoke in favor of the bill. He also brought to the committee's attention that other legislation was being considered in the House, and with the committee's permission, that this bill be held until relative legislation could be examined. The committee granted his request.

SB 1460 The legislation repeals and adds to existing law to provide a municipal election law.



Ray Holly, AIC, spoke in favor of the bill. The bill is a recodification of the municipal election laws. The main intent is to keep Title 50, I. C. intact, and incorporate Title 34, I. C. However, there are some changes purposed to help clarify the intent, and he presented the amendments to the committee.

MOTION Senator Klein asked that because of the complexity of the bill, that study guides be distributed to the committee members by AIC.

Senator Klein moved and Senator Hartvigsen seconded the motion that SB 1460 be reported from committee to the 14th ORDER FOR AMENDMENT. The motion passed unanimously. Senator McCann will sponsor the bill.

RS 3501 The Joint Memorial was presented by Senator Crystal. It relates to the national urban policy. The memorial is in opposition to the policy.

MOTION Senator Klein moved and Senator Crystal seconded the motion that RS3501 be referred to a privileged committee for introduction. The motion carried unanimously.

RS 3495 The proposed legislation provides that assessed value shall mean fifteen per cent of market value.

MOTION Senator Klein moved and Senator Watkins seconded the motion that RS 3495 be referred to a privileged committee for introduction. The motion passed unanimously.

(HOUSE)

LOCAL GOVERNMENT COMMITTEE

M I N U T E S

SATURDAY, MARCH 11, 1978

TIME: Saturday, March 11, 1978.

PLACE: Room 408, Statehouse.

PRESENT: Ingram, Bunting, Bateman, Gwartney, Harris, Harlow, Spurgeon, Sallaz, Gould.

ABSENT OR
EXCUSED. Munger, Stivers, Walker.

VISITORS: Ray Holly, Association of Idaho Cities, Boise; Ottis Peterson, Nampa-Meridian Irrigation District, Boise; Dean Huntsman, Idaho Association of Counties, Boise.

Meeting called to order by Chairman Ingram at 1:45 p.m.

MOTION: Representative Spurgeon moved that the minutes of the March 8, 1978 meeting be approved as written; seconded by Representative Gould.

Motion carried unanimously.

SB 1460 Mr. Holly of the Association of Idaho Cities explained the purpose of this bill. He said it is a recodification of the city election laws and it simply clarifies the conduct of city elections by incorporating all existing statutes into one section of the code. He presented a comparison of Senate Bill 1460 and the present statutes for the committee's information. A copy of that comparison is attached hereto. He said they would like to bring all of these parts of the code into one section of the code. He said they feel this is good legislation and hopes it will be sent to the floor with a do pass recommendation. There are no radical changes -- it only puts all those statutes into one body.

MOTION: Representative Gould moved that we send SB 1460 to the floor with a "do pass" recommendation; seconded by Spurgeon.

Chr. Ingram asked of Mr. Holly if he knew what the vote was in the Senate, to which he replied there three votes against it.

Motion carried unanimously. (Gould to carry)

SB 1529 Mr. Ottis Peterson of the Nampa-Meridian Irrigation District presented this bill and explained its purpose. He said SB 1529 is the last package of bills worked out with Senator Cobbs and Representative Gwartney. Senator Klein asked for an amendment in the Senate following testimony of Assessor Clark. SB 1529 would permit an irrigation district to elect to have assessments against lands subdivided into tracts of four acres or less in order to eliminate the assessment charge which under present circumstances often exceeds the amount of the operation and maintenance assessment. This would present ways for people to get out of the district. The whole package makes it possible for those to stay in, or not, as they elect to do. Representative Spurgeon questioned the new material in the bill which states "Such resolution may provide that only assessments against lands subdivided into tracts of four acres or less shall be collected by the county officers." He was concerned with the mandatory word "shall" to which Mr. Huntsman replied

ADDENDUM B

IDAHO STATUTES

I.C. § 50-467 THROUGH 50-470

I.C. § 50-601

I.C. § 50-702

50-467
TITLE 50 MUNICIPAL CORPORATIONS
CHAPTER 4 MUNICIPAL ELECTIONS

50-467 CANVASSING VOTES -- DETERMINING RESULTS OF ELECTION.

The mayor and the council, within six (6) days following any election, shall meet for the purpose of canvassing the results of the election. Upon acceptance of tabulation of votes prepared by the election judges and clerks, and the canvass as herein provided, the results of both shall be entered in the minutes of proceedings and proclaimed as final. Results of election shall be determined as follows: in the case of a single office to be filled, the candidate with the highest number of votes shall be declared elected; in the case where more than one office is to be filled, that number of candidates receiving the highest number of votes, equal to the number of offices to be filled, shall be declared elected.

TITLE 50 MUNICIPAL CORPORATIONS
CHAPTER 4 MUNICIPAL ELECTIONS

50-468 TIE VOTES.

In case of a tie vote between candidates, the city clerk shall give notice to the interested candidates to appear before the council at a meeting to be called within six (6) days at which time the city clerk shall determine the tie by a toss of a coin.

50-469
TITLE 50 MUNICIPAL CORPORATIONS
CHAPTER 4 MUNICIPAL ELECTIONS

50-469 FAILURE TO QUALIFY CREATES VACANCY.

If a person elected fails to qualify, a vacancy shall be declared to exist, which vacancy shall be filled by the mayor and the council.

50-470
TITLE 50 MUNICIPAL CORPORATIONS
CHAPTER 4 MUNICIPAL ELECTIONS

50-470 CERTIFICATES OF ELECTIONS.

A certificate of election for each elected city official or appointee to fill such position shall be made under the corporate seal by the city clerk, signed by the mayor and clerk, and presented to such officials at the time of subscribing to the oath of office.

50-601
TITLE 50 MUNICIPAL CORPORATIONS
CHAPTER 6 MAYOR

50-601 QUALIFICATIONS.

Any person shall be eligible to hold the office of mayor who is a qualified elector of the city at the time his declaration of candidacy or declaration of intent is submitted to the city clerk and remains a qualified elector during his term of office.

The term of office of mayor shall be for a period of four (4) years except as otherwise specifically provided. He shall take office at the time and in the manner provided for installation of councilmen.

50-702
TITLE 50 MUNICIPAL CORPORATIONS
CHAPTER 7 COUNCIL

50-702 QUALIFICATION OF COUNCILMEN -- TERMS -- INSTALLATION.

Any person shall be eligible to hold the office of councilman of his city who is a qualified elector at the time his declaration of candidacy or declaration of intent is submitted to the city clerk, and remains a qualified elector under the constitution and laws of the state of Idaho. Each councilman elected at a general city election, except as otherwise specifically provided, shall hold office for a term of four (4) years, and until his successor is elected and qualified. Councilmen elected at each general city election shall be installed at the first meeting in January following election. The manner of conducting that meeting shall be as herein set forth and not otherwise: the incumbents shall meet and conduct such business as may be necessary to conclude the fiscal matters of the preceding year; the newly elected shall then subscribe to the oath of office, be presented certificates of election, assume the duties of their position, and conduct such business as may be necessary, one (1) item of which shall be the election of a member as president of the council.

ADDENDUM C

IDAHO CONSTITUTION

ARTICLE VI, § 2

ARTICLE VI, § 3

**SECTION 2. QUALIFICATIONS OF ELECTORS.
ARTICLE VI - SUFFRAGE AND ELECTIONS**

SECTION 2. QUALIFICATIONS OF ELECTORS.

Every male or female citizen of the United States, eighteen years old, who has resided in this state, and in the county where [where] he or she offers to vote for the period of time provided by law, if registered as provided by law, is a qualified elector.

**SECTION 3. DISQUALIFICATION OF CERTAIN PERSONS.
ARTICLE VI - SUFFRAGE AND ELECTIONS**

SECTION 3. DISQUALIFICATION OF CERTAIN PERSONS.

No person is permitted to vote, serve as a juror, or hold any civil office who has, at any place, been convicted of a felony, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

