

CHAPTER 1

THE IDAHO COUNTY

The first Idaho counties were established during the Civil War. In 1890, when Idaho became a state, there were already sixteen established counties. The present 44 counties range in size from 403 to 8,515 square miles. The largest, Idaho County, is larger than the state of Connecticut and eight times the size of the state of Rhode Island. In 2010, populations of Idaho counties varied from 982 people in Clark County to 392,365 in Ada County. The population density of Canyon County is over 322 persons per square mile, while three Idaho counties have less than one person per square mile. The economies of Idaho counties differ greatly, ranging from farming or ranching to lumbering or mining. Others have urban economies based on manufacturing, and wholesale and retail trade. These differences in Idaho counties are significant for county government, because urban counties have different governmental needs and problems than those of sparsely populated, rural counties.

THE IDAHO CONSTITUTION AND COUNTY GOVERNMENT

The Idaho Constitution establishes the fundamental legal framework for county government in Idaho. It prescribes the elected county officials and their terms of office; places limitations on county indebtedness; contains detailed provisions on county boundaries; and provides for optional forms of county government. The following provisions of the Constitution are especially significant for county government:

Article 5, Section 16:

Provides a four-year term of office for clerk of the district court; however, the adoption of an optional form of county government may supersede this section.

Article 5, Section 18:

Provides that prosecuting attorneys be elected for a four-year term beginning in 1984. Prior to 1984 they had two-year terms. The adoption of an optional form of county government may supersede this section.

Article 7, Section 4:

Exempts county property from taxation.

Article 7, Section 5:

Provides that taxes shall be uniform on the same class of subjects within the territorial limits of the authority.

Article 7, Section 6:

Gives counties the power to levy taxes.

Article 8, Section 3:

Places limitations on county indebtedness.

Article 8, Section 5:

Authorizes counties and cities to issue non-recourse revenue bonds to be used only to finance industrial development facilities.

Article 9, Section 5:

Prohibits appropriations by counties for religious purposes or for sectarian schools.

Article 18, Section 1:

Recognizes the counties existing at the time Idaho became a state as legal subdivisions of the state.

Article 18, Section 2:

Prohibits the change in location of a county seat unless (1) a majority of the qualified electors in the county sign a petition, and (2) two-thirds of the qualified electors of the county voting on the proposition at the general election approve such removal.

Article 18, Section 3:

States that no county shall be divided unless a majority of the qualified electors in the territory proposed to be cut off from the county shall vote in favor of the proposition at the general election. (State law requires that before an election takes place, the boards of county commissioners of the counties affected by the boundary change must approve the change.)

Article 18, Section 4:

States that no new counties shall be established which shall reduce any county to an area of less than 400 square miles or a valuation of less than \$1 million. Prohibits the establishment of any county with an area of less than 400 square miles and a valuation of less than \$1 million.

Article 18, Section 4A:

States that counties may be consolidated in accordance with state law. However, no county may be consolidated with another county without approval by a two-thirds vote in each county.

Article 18, Section 5:

Provides that the legislature "shall establish, subject to the provisions of this article, a system of county government which shall be uniform through the state." Article 18, Section 12 supersedes this section and allows counties to adopt an optional form of county government as defined by statute.

Article 18, Section 6:

Provides for the election of county officers. Provides that the clerk of the district court shall be ex-officio auditor and recorder. States that no other county offices shall be established. Provides that certain county officials may appoint deputies and assistants.

The adoption of an optional form of county government may supersede this section.

Article 18, Sections 7 and 8:

Provides for the payment of salaries to county officers and deputies. States that all actual and necessary expenses incurred by any county officer or deputy in the performance of his or her duties shall be a legal charge against the county and may be retained by him or her out of any fees which may come into his or her hands. All fees coming to a county officer above his or her actual and necessary expenses shall be turned over to the county treasury. However, the procedure for expense reimbursement was revised by a 1980 amendment to the *Idaho Code* (31-3101).

Article 18, Section 9:

Provides penalties for failure of county officers to pay into the county treasury fees collected in excess of actual and necessary expenses of the office.

Article 18, Section 10:

Establishes a three-member board of county commissioners. At each biennial election one member is elected for a two-year and one member is elected for a four-year term.

The adoption of an optional form of county government may supersede this section.

Article 18, Section 11:

States that county officers shall perform such duties as shall be prescribed by law.

Article 18, Section 12:

States that the legislature may provide for optional forms of county government but that no optional form shall be operative unless the majority of the electors in a county approve the change. There is also a provision that changes may not be placed on the ballot more frequently than each four years and that if an option form is adopted, the provisions of this section supersede sections 5, 6 and 10 of article 18 and sections 16 and 18 of article 5.

IDAHO LAW AND COUNTY GOVERNMENT

Idaho law provides a detailed, legal framework for county government, describes the powers of county officials, and enumerates the functions that counties may perform. Idaho does not have a county home-rule provision in its Constitution, thus county officials have less flexibility in establishing new programs and procedures than do county officials in county home-rule states.

The provisions of Idaho law pertaining to county government will be cited throughout this handbook. The citations refer to the *Idaho Code* published by Michie Company, Inc., and the

number of the citation will appear after the sentence to which it refers. Reference to section 3101 of title 31 of the *Idaho Code*, for example, will be cited as (31-3101). Reference to the Idaho Constitution will be according to article and section.

THE ROLE OF COUNTY GOVERNMENT IN IDAHO

Idaho counties, like counties in other states, have a dual function. They serve as an arm of the state government in administering elections, enforcing state laws, and performing many other state-mandated functions. They also serve as a unit of local government which has responsibilities in meeting the needs of its own citizens in health, welfare, agricultural services, public works, planning, parks, and recreation. These functions of county government are covered in detail in Chapters 10 through 13.

COUNTY BOUNDARIES AND COUNTY SEATS

Prior to Idaho's becoming a state in 1890, county boundaries and county seats were established by the Washington Territorial Legislature, the Idaho Territorial Legislature and the U.S. Congress. One Idaho County, Latah, was established in 1888 by a U.S. Congressional Act. The county boundaries and county seats established in territorial days were recognized by the Idaho Constitution in 1890. Since statehood, 28 new counties have been created from the territory of existing counties, and a number of changes in county boundaries have been made.

Creation of New Counties

The Idaho Constitution (Article 18, Section 4) sets limits on the creation of new counties. No new counties may be established which reduce an existing county to an area of less than 400 square miles or a valuation of taxable property of less than \$1 million. The new county must also have an area of at least 400 square miles and a valuation of at least \$1 million. New counties are created by legislative act, and the legislature may make any provision necessary for the organization of a new county if it is not specifically prohibited by the Constitution (Bannock County v. Bunding & Co., 4 Idaho 156, 37 Pac. 277). The *Idaho Code* provides for a transfer of county records to the newly created county (31-301 through 31-303).

County Boundaries

A change in county boundaries can be initiated by a joint ordinance of the boards of county commissioners of two counties (31-212). An election must then be held in the area which is to be annexed to the adjoining county. No person may vote in this election who has not been a resident of the area for at least ninety (90) days prior to the election (Article 18, Section 3). If a majority of the electors voting at the election favor annexation, the territory is stricken from one county and annexed to the other county (31-212). The state legislature, at the next legislative session, must revise the descriptions of the boundaries of the two affected counties to conform with the annexation (31-212).

When any part of a county is stricken off and attached to another county, the part annexed is held liable for its ratable proportion of the liabilities of the county from which it is taken (Article 18, Section 3). Procedures for filming and transferring records for the annexed area are described by Section 31-212, *Idaho Code*. The most recent county boundary change occurred when an area of Bannock County was transferred to Caribou County in 1948.

County Seats

The Idaho Constitution provides that no county seat shall be changed to a new location without a petition signed by a majority of the qualified electors in the county (Article 18, Section 2). Procedures for circulation of the petition are described in Sections 31-202 through 31-205 of the *Idaho Code*. The district court rules on the validity of the signatures if the petitions for change are contested (31-206 and 31-207). If sufficient signatures are obtained, an election is held. The county seat is changed to the new location if two-thirds or more persons voting on this issue approve the change (Article 18, Section 2). A proposition to change the location of the county seat may not be submitted to the voters in any county more than once in six (6) years (Article 18, Section 2). Specific ballot language to change a county seat or change boundaries is located in section 31-3214, *Idaho Code*.

Consolidation of Counties

Provision for consolidation of counties was added to the Idaho Constitution in 1932 but not, as of yet, been used (Article 18, Section 4A). Under this constitutional provision, it is possible for counties to consolidate upon approval by a two-thirds majority vote in each county. State law first requires that a petition be circulated in any county desiring consolidation with another county. The number of signatures of qualified electors obtained on the petition must be equal to or greater than two-thirds of all the votes cast in that county in the last general election (31-403). Petitions are filed with the clerk of the court and are open to inspection by the public (31-403 and 31-404). Any qualified voter of the county shall have the right to contest a signature on the petition (31-405). The district court rules on the validity of signatures (31-406).

After due notice, a consolidation election is held on one of the election consolidation dates specified in section 34-106, *Idaho Code*. If two-thirds or more of the voters who vote on the issue in both counties favor consolidation, then the two counties merge (31-412). After consolidation occurs, the term of county officers in the county which has been consolidated automatically terminate (31-412). Procedures for the disposition of the bonded debt of the county consolidated, the transfer of records, and the distribution of county moneys are described in Sections 31-413 through 31-415 of the *Idaho Code*.

THE ORGANIZATION OF COUNTY GOVERNMENT

The form of organization of county government in Idaho is established by state constitution and state law. Until 1996, only one form of county government was available. Now there are several different options for counties and voters to consider. It is important to remember that even if a different form of county government is chosen, the county must continue to perform the duties and

responsibilities imposed by the constitution and laws of the state of Idaho (31-5001(2)).

There are two ways to begin the process of putting an optional form of government on the ballot. First the governing body may pass a resolution for submission of the question to the electors or upon a petition signed by 15% of qualified electors, the governing body shall put the question on the ballot. In either case, the question is submitted at a general election (31-5004).

There is also a provision for the establishment of a study commission to study the existing form of county government, compare it to other optional forms and submit a report and any recommendations for change to the board (31-5101). The board of county commissioners appoints a five to nine member commission upon receiving a petition signed by 15% of qualified electors who voted in the last general election or by resolution of the commissioners (31-5101). The study commission, within one year of its first meeting, must conduct one or more public hearings prior to its submission of its final report to the governing body. If the study commission recommends an optional form, the report must contain a complete description of the form and a comparison of the existing form and proposed form (31-5105). If the study commission was established by resolution, the governing body may or may not submit the question of the optional form to the voters. If the commission was established by petition, the recommendation for an optional form must be submitted to the electors of the county (31-5106).

Provisions That Relate to All Forms

Each county is divided into county commissioner districts (31-704). Commissioners must meet the residency requirements in the county and district which they represent and must be a resident in the district which they represent for a period of ninety (90) days preceding the primary election (31-702; 31-703; 34-617). However, a commissioner is elected by a county-wide vote.

A candidate for county elected office must be twenty-one years of age, a U.S. citizen, and must have resided in the county for one (1) year preceding the election and in the district which he/she represents for a period of ninety (90) days next preceding his election (34-617 through 34-623). In the case of county commissioners, the candidate must be a resident of the district 90 days prior to the primary election (34-617). At the time of filing a declaration of candidacy, the candidate for county office must also pay a filing fee. This fee is \$40 for all county officers; however, in lieu of the filing fee, a candidate can qualify by filing a declaration of candidacy and nominating petition with a specific number of signatures (34-626).

A person who claims a county office without being rightfully entitled to the office is subject to usurpation proceedings (6-602), and all elected officers, except judicial officials, are subject to recall by the legal voters of the county (Article 6, Section 6).

Original Three-Member Board

Until 1996, this was the only form of county government allowed under the state constitution and is still the only form used in all 44 counties. This form consists of three elected commissioners that serve two and four-year terms. The board of county commissioners is the governing body of the county with power to adopt a budget, levy county taxes, and enact ordinances. The board may

appoint administrative assistants or a member of the board to act as an administrator. A county commissioner that is appointed to act as the administrator has only those administrative powers and duties that are assigned by ordinance or resolution (31-818). The board has significant appointive, administrative, regulatory, and other powers which are described in greater detail in Chapter 2.

The following officials are also elected: a county clerk of the district court, who is ex officio auditor, recorder, chief elections officer, and clerk of the county commissioners; a county assessor; a county treasurer, who is ex officio public administrator; a sheriff; a prosecuting attorney; and a coroner.

The person receiving the most votes for each office in the November general election is elected, and the terms of office start on the second Monday of January in the year following the election (59-404). The oath of office, taken on that day, is filed in the office of the county recorder (59-405). All deputies and clerks must also take an official oath before entering upon their duties (59-406).

Three-Member Board with Changes in Other County Offices

This form consists of three elected commissioners who may serve four-year terms, if approved by voters (31-5402). In addition, the other elected county offices may be changed (if approved by voters) to appointed positions; have different terms of office; the office may be eliminated; or in the case of treasurer and clerk, the office may be divided into separate offices (31-5403 through 31-5409). Any changes to the structure of a county office does not relieve the county of the responsibility to ensure that all the duties and responsibilities of each office are performed

The board may appoint administrative assistants or a member of the board to act as an administrator. A county commissioner that is appointed to act as the administrator has only those administrative powers and duties that are assigned by ordinance or resolution (31-818).

Five-Member Board of County Commissioners

This form consists of five elected commissioners who serve a two or four-year term rotation or may serve four-year terms, if approved by voters (31-5502). The five-member board may choose to vest its executive authority in an executive board comprised of three members chosen by the board as a whole (31-5504). In addition, the other elected county offices may be changed (if approved by voters) to appointed positions; have different terms of office; the office may be eliminated; or in the case of treasurer and clerk, the office may be divided into separate offices (31-5503 through 31-5509). Any changes to the structure of an office do not relieve the county of the responsibility to ensure that all the duties and responsibilities of each office are performed.

The board may appoint administrative assistants or a member of the board to act as an administrator. A county commissioner that is appointed to act as the administrator has only those administrative powers and duties that are assigned by ordinance or resolution (31-818).

Seven-Member Board of County Commissioners

This form consists of seven elected commissioners who serve a two or four-year term rotation or

may serve four-year terms, if approved by voters (31-5602). The seven-member board may choose to vest its executive authority in an executive board comprised of five members chosen by the board as a whole (31-5604). In addition, the other elected county offices may be changed (if approved by voters) to appointed positions; have different terms of office; the office may be eliminated; or in the case of treasurer and clerk, the office may be divided into separate offices (31-5603 through 31-5609). Any change to the structure of an office does not relieve the county of the responsibility to ensure that all the duties and responsibilities of each office are performed.

The board may appoint administrative assistants or a member of the board to act as an administrator. A county commissioner that is appointed to act as the administrator has only those administrative powers and duties that are assigned by ordinance or resolution (31-818).

Commission-Executive

This form of government consists of an elected executive who is the chief administrative official of the county (31-5204) and a board of either three, five or seven members who retain the legislative authority of the county (31-5206). The executive is the county budget officer and is responsible for preparing and submitting the annual budget (31-5204(c)). The executive may also appoint an administrative assistant to help with the orderly and efficient operation and coordination of the functions of the county (31-5204(3)). The executive may veto ordinances or budget resolutions but the board of commissioners may override the veto by a two-thirds vote of all its members.

The board of county commissioners serves a two or four-year term rotation or may serve four-year terms, if approved by voters (31-5207). In addition, the other elected county offices may be changed (if approved by voters) to appointed positions; have different terms of office; the office may be eliminated; or in the case of treasurer and clerk, the office may be divided into separate offices (31-5209 through 31-5214). Any change to the structure of an office does not relieve the county of the responsibility to ensure that all the duties and responsibilities of each office are performed.

Commission-Manager

Under this form, the county is governed by a three, five or seven-member board (31-5304). The board of county commissioners serves a two or four-year term rotation or may serve four-year terms, if approved by voters (31-5305). The board appoints a manager based on training, experience and administrative qualifications and the manager is the administrative head of the county (31-5302(1)). The board may appoint any county elected official to serve as the manager (31-5302(3)). The manager is the county budget officer and prepares and submits the annual budget to the board (31-5303(4)).

In addition, the other elected county offices may be changed (if approved by voters) to appointed positions; have different terms of office; the office may be eliminated; or in the case of treasurer and clerk, the office may be divided into separate offices (31-5307 through 31-5312). Any changes to the structure of an office do not relieve the county of the responsibility to ensure that all the duties and responsibilities of each office are performed.

Consolidation of Offices among Counties

This provision allows two or more counties to consolidate one or more county offices, other than the office of commissioner (31-5701). The consolidation is approved if the majority of voters in each county approve the measure (31-5702). Consolidation of offices does not relieve a county from the performance of all of the duties and responsibilities of the county (31-5703).

Charter Form

The process for a charter form of government begins with a vote on whether a charter commission be elected to draft a charter for the county (31-5802). If the county approves an election of a charter commission, the commission has four years to draft a charter or it is dissolved (31-5802). If a charter is drafted, the proposed charter must be submitted to electors at a general election for the elector's approval (31-5802).

A county charter does not expand the county's powers granted by the constitution or laws of the state of Idaho, nor can a charter limit or prohibit duties required by the constitution or the statutes (31-5807). The charter must provide for an elected legislative body and expressly define the officers who will perform the executive functions of the county (31-5808).

NOTES