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SHARED FOUNDATION · I.C. 59-401

"I will support the Constitution of the United States, and the Constitution of the State of Idaho, and … faithfully discharge the duties of [office]."

Every officer takes the same oath. Start from the presumption that everyone acts legally and properly.

2

COUNTY STRUCTURE · I.C. 31-2001

Independent offices, one county

7
elected offices

9
independently elected officials

1
county whose interests come first

No elected office directs another. County government works best when each puts the county ahead of personal or partisan interest.

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01

The board makes county policy and law

Ordinances, policy resolutions, and the limits on board authority

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BOARD OF COUNTY COMMISSIONERS

Three branches in one body

Executive
Manager and administrator of county operations and budget

Legislative
County ordinances and policy resolutions

Quasi-judicial
Land use applications and the Board of Equalization

Today's focus: the legislative role — and the quasi-judicial role in land use.

Idaho Association of Counties · The board's role

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SOURCE OF AUTHORITY

Board powers come from statute

I.C. 31-801
Jurisdiction and power "under such limitations and restrictions as are prescribed by law."

I.C. 31-828
Incidental powers needed to discharge duties as the county's "chief executive authority."

The first legal question is always: where does our authority come from?

Idaho Association of Counties · The board's role

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ORDINANCE POWER · I.C. 31-714

The board may pass ordinances “not repugnant to law”

To carry out powers granted by state law, and for the safety, health, prosperity, peace, and good order of the county.

Enforcement runs through the prosecutor — so the prosecutor is a natural drafting partner.

MAXIMUM PENALTY

$1,000

and/or six months in jail

Idaho Association of Counties · The board’s role

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OPEN MEETING LAW

An ordinance is always an action item. Never a consent agenda item.

Record every ordinance and resolution, with its date, in the board’s permanent records.

Idaho Association of Counties · The board’s role

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COUNTY-WIDE POLICY

Reasonable, general policy is the board's call

What the board can set

Personnel, procurement, credit card, and fee policies

Fees

Reasonably related to — and never more than — the actual cost of service

The closer a policy gets to another office's core function, the less the board controls.

LIMITS ON BOARD AUTHORITY

Two lines the board can't cross

It acts only as a board

A single commissioner has no independent authority.

It can't run another office

Statutory functions belong to the officer elected to do them.

02

The prosecutor as legal adviser

Who the client is, what the job includes, and where advice matters most

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STATUTORY DUTIES

The law names the prosecutor as adviser

I.C. 31-2604(3)

"To give advice to the board … and other public officers … when requested in all public matters."

I.C. 31-2607

"The legal adviser of the board": attends meetings when required and opposes unjust or illegal claims.

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WHO IS THE CLIENT? · IRPC 1.13

The board is the prosecutor’s primary client.

The county acts through its officials. Other elected officials are clients of the office — but no official is personally the client.

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THE ADVISER’S OTHER HATS

Adviser to the board — and enforcer against it

Law enforcement

Primary duty to enforce penal laws, along with the sheriff

Transparency laws

Enforces Open Meeting and Ethics laws locally

Board as subject

A special prosecutor must be sought

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EVERYDAY ADVICE

Three places advice matters most

74-206(1)(f)
Executive sessions
Counsel must communicate — mere presence isn't enough

74-103
Records denials
Denial must say whether an attorney reviewed it

74-404
Conflicts of interest
Acting on the county attorney's advice protects you

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THIRD PARTIES

The prosecutor doesn't advise private citizens

May inform
General information, not legal advice.

May refer
To a private attorney or law enforcement.

Commissioners
Don't send a citizen to your prosecutor without a heads-up first.

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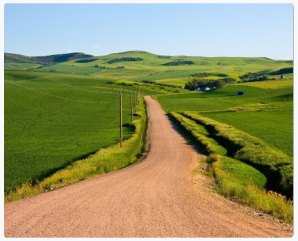
STAFFING THE ADVICE FUNCTION · I.C. 31-2602

The board controls how fast advice can come

The board authorizes deputy prosecutors on a finding that they are necessary.

The board sets their salaries.

Under-staffed, underfunded office = slower advice.



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03

Legal advice vs. policy decisions

Where the two roles meet — and where they shouldn't overlap

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THE CORE RULE

Two responsibilities, clearly divided

PROSECUTOR

Legal advice

What the law allows, requires, or forbids

BOARD

Policy decisions

What the county should do, within the law

Every policy has legal consequences. Legal advice is the foundation.

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READING LEGAL ADVICE

Some answers are clear. Many are not.

Easy

"The law says you can — or cannot — do this."

Harder

"Maybe." "More likely X than Y." "It's not clear."

In the gray zone, the prosecutor weighs the risk. The board decides whether to take it.

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DISCUSSION SCENARIO · NOT LEGAL ADVICE

The prosecutor disagrees with the policy

> The board proposes a land use ordinance. The prosecutor thinks it's bad policy — but not illegal.

Ask: Can the prosecutor tell the board not to adopt it?

Ask: What should the prosecutor's advice be based on?

DISCUSSION SCENARIO · NOT LEGAL ADVICE

Advice needed this week

> A small county's board needs advice within a week. The prosecutor is in a major trial and says two weeks.

Authorize a civil deputy	Special prosecutor	Outside counsel in consultation with prosecutor, on a necessity finding

BEST PRACTICE

Building an ordinance together

1 Board sets the policy goal	**2** Prosecutor checks authority and preemption	**3** Draft the ordinance	**4** Notice and hearing, as required
5 Board adopts as an action item	**6** Publish in full or by summary	**7** Record and codify	**8** Plan enforcement with the prosecutor

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04

Making the relationship work

Privilege, outside counsel, and handling disagreements

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ATTORNEY-CLIENT PRIVILEGE

Three sources protect your conversations

I.R.E. 502(b)

Rule of evidence: refuse to disclose confidential legal communications

I.C. 9-203(2)

Statute: an attorney can't be examined without the client's consent

I.R.P.C. 1.6

Ethics rule: no revealing client information without consent

Privileged records are exempt from public records disclosure.

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WHY PRIVILEGE MATTERS

Open, honest conversation.

Better-considered decisions.

Protected analysis and work product.

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LIMITS OF PRIVILEGE

When privilege doesn't hold — or clients collide

Exceptions

Crime or fraud, breach of duty, preventing death or serious harm

Conflicts between officials

The board comes first; the other official gets separate counsel, with board approval

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SPECIALIZED SERVICES

Would you hire a divorce lawyer for a DUI?

PROSECUTOR'S STRENGTHS

Criminal law

General government and civil law

OFTEN NEEDS A SPECIALIST

Bonds · Water law

Insurance defense · Deferred compensation

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OUTSIDE COUNSEL · IDAHO CONST. ART. XVIII, § 6

Hiring outside counsel takes a finding of necessity

How

Case-specific motion and order stating the necessity

Best practice

Get the prosecutor's concurrence first

The risk

No finding? Contract void; fees subject to repayment

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WHEN YOU DISAGREE

Disagreements will happen. Talk it out.

1

Is it a legal or a policy disagreement?

2

Don't opinion-shop. Be up front about who you call.

3

Agree on a specialist — or agree to disagree.

Last resort: a case-specific motion and order finding necessity.

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THE WARRANTY

Your prosecutor keeps your policy decisions legal.

And acting on their conflict-of-interest advice can protect you under I.C. 74-404.

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TAKEAWAYS

Four habits that make it work

- Ask early — before the agenda is set
- Get important advice in writing
- Invite the prosecutor when policy is drafted
- Have counsel review land use findings

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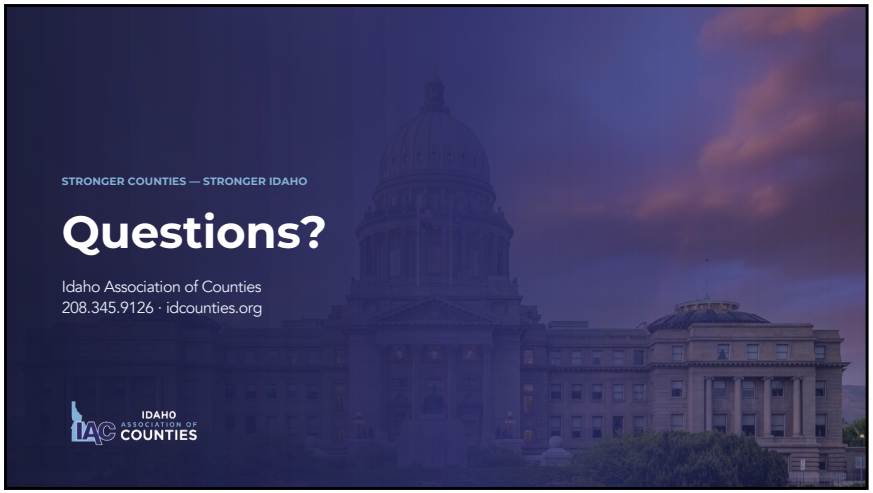
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Questions?
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