



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

November 1, 2022

The Honorable Mary Souza
Idaho State Senate
P.O. Box 2223
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Re: Request for AG Analysis

Dear Senator Souza:

This letter is provided to assist you regarding your questions about a potential violation of Idaho's Urban Renewal Law through voluntary acquisition of real property located within an urban renewal project area as a board member. This opinion is narrowly tailored based on the single factual scenario presented of "voluntary acquisition" of real property by a board member of an urban renewal commission and is not to be construed as a finding that any individual has committed any violation of the law. For your benefit, here is the link to the Idaho Ethics in Government Manual which provides guidance on other laws that might apply, depending on the facts, <https://www.ag.idaho.gov/content/uploads/2022/01/EthicsInGovernmentManual.pdf>. However, this office cannot provide further analysis beyond the single fact presented.

QUESTIONS PRESENTED

1. If a Board member of an Urban Renewal Agency voluntarily acquires real property within the same urban renewal revenue allocation area over which they preside, does that board member violate Idaho statute title 50, chapter 20 Urban Renewal law or any other Idaho statutes; and
2. What are the civil penalties or remedies if the answer to question 1 above is yes?

SHORT ANSWER

1. If the Board member voluntarily acquires real property within the urban renewal project area, that Board member violates Idaho Code § 50-2017. If the Board member owns—or owned within the previous two years—real property he or she knows is included or planned to be included and fails to disclose the ownership and/or votes on the project, the Board member violates Idaho Code § 50-2017. Said violations are defined in that statute as misconduct in office.
2. Idaho Code § 50-2006(2)(b) provides that the remedy for misconduct in office is removal by a majority vote of the local governing body only after a hearing. The Board member must receive a copy of the charges at least ten (10) days prior to such hearing and have an opportunity to be heard in person or by counsel at the hearing.

ANALYSIS

I. Violation of Idaho’s Urban Renewal Law through voluntary acquisition of real property.

“Urban renewal agencies are vested with police power of the state for the purpose of removing slums or blighted areas and for rehabilitation, conservation, and redevelopment of such areas as might be necessary in interest of public health, safety, morals or welfare of residents of municipality.” *Mountain States Tel. & Tel. Co. v. Boise Redevelopment Agency*, 101 Idaho 30, 34, 607 P.2d 1084, 1088 (1980). Governance of the urban renewal agencies is outlined in Idaho Code §§ 50-2001 through 50-2033, known as the Idaho Urban Renewal Law.

Specific violations of the act relating to voluntary acquisition of property that is included or planned to be included in an urban renewal area are addressed in Idaho Code § 50-2017:

No public official or employee of a municipality (or board or commission thereof), and no commissioner or employee of an urban renewal agency shall voluntarily acquire any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project. Where such acquisition is not voluntary, the interest acquired shall be immediately disclosed in writing to the agency and such disclosure shall be entered upon the minutes of the agency. If any such official, commissioner or employee presently owns or controls, or owned or controlled within the preceding two (2) years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project, he shall immediately disclose this fact in writing to the agency, and such disclosure shall be entered upon the minutes of the agency, and any such official, commissioner or employee shall not participate in any action by the municipality

(or board or commission thereof), or urban renewal agency affecting such property.
Any violation of the provisions of this section shall constitute misconduct in office.

Idaho Code § 50-2017.

According to a plain reading of the statute, a board member may violate the act the following three ways:

- (1) The board member voluntarily acquires any personal interest, direct or indirect, in any urban renewal project, or in any property included or planned to be included in any urban renewal project in such municipality or in any contract or proposed contract in connection with such urban renewal project;
- (2) The board member involuntarily acquires any of the above and fails to disclose it, and/or the disclosure is not entered into the minutes of the agency;
- (3) The board member presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which he knows is included or planned to be included in an urban renewal project and fails to disclose and/or the disclosure is not entered into the minutes of the agency, and/or the board member participates in any action by the municipality affecting the property.

The policy behind this and similar statutes is to protect the public treasury's actual and perceived integrity. In some cases, no violation is found where the charges are not based on malicious or corrupt acts, but on minor neglect of duties or administrative oversights. Sufficiency of cause, 4 McQuillin Mun. Corp. § 12:330 (3d ed.).

II. Remedy

Under Idaho's Urban Renewal Law of 1965, the general remedy for misconduct in office is removal from office as stated:

For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by a majority vote of the local governing body only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel.

Idaho Code § 50-2006.

The use of the phrase "may be removed" in this section makes the remedy discretionary. *State ex rel. Parsons v. Bunting Tractor Co.*, 58 Idaho 617, 77 P.2d 464, 467 (1938). This is further supported by the fact that it requires a majority vote of the local governing body. Accordingly, while a member may be removed, it is not automatic. Removal of a board member would be subject to judicial review under the Idaho Administrative Procedures Act, Idaho Code § 67-5271 under an abuse of discretion standard. Due to a lack of caselaw addressing removal, it is uncertain how a court would handle this question. However, removal of a public officer is a drastic remedy

reserved for unscrupulous conduct or gross dereliction of duty or conduct that connotes a pattern of misconduct and abuse of authority, and for malicious and corrupt acts as compared to minor neglect of duties, administrative oversights, and violations of law. 63C Am. Jur. 2d Public Officers and Employees § 192.

III. Other Statutes

As previously stated, this analysis is limited to the very specific factual scenario presented in the inquiry and is not a finding that any violation has occurred. Without more facts, further analysis under other applicable statutes is not possible. Other statutes under which urban renewal agencies are required to comply are specifically named in the Urban Renewal Law and include, but are not limited to, the following: public records law pursuant to chapter 1, title 74, Idaho Code; open meetings law pursuant to chapter 2, title 74, Idaho Code; ethics in government law pursuant to chapter 4, title 74, Idaho Code; and the competitive bidding provisions of chapter 28, title 67, Idaho Code. Idaho Code § 50-2006(6).

IV. Conclusion

A board member's voluntary acquisition of property that is included or planned to be included in any urban renewal project within that board member's municipality may be considered as misconduct in office. The remedy for misconduct in office is potential removal from the agency by a majority vote after a hearing where the member is entitled to notice and an opportunity to be heard. If the member is not removed, he or she must continue to comply with the disclosure and abstention requirements of the remainder of Idaho Code § 50-2017.

I hope you find this analysis helpful.

Very truly yours,



J.J. WINTERS
Deputy Attorney General, Natural Resources