



## STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

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### ATTORNEY GENERAL OPINION NO. 17-01

TO: Susan E. Buxton, Administrator  
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VIA STATEHOUSE MAIL

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The following questions dealing with employees of the Idaho Department of Correction who qualify for police officer member status for purposes of the Idaho Public Employee Retirement System (PERSI) have been posed to this office.

#### QUESTIONS PRESENTED

1. For purposes of PERSI, what IDOC employees working inside a prison are eligible for police officer member status pursuant to Idaho Code § 59-1303(3)(e)(ii), and thus for Rule of 80 status?
2. If some IDOC employees are reclassified to a position not eligible for police officer member status, what impact would this have on their accrued retirement benefits and their retired benefits going forward?

#### CONCLUSIONS

1. Idaho Code § 59-1303 must be read in such a manner as to effectuate all subsections and make the entire provision internally consistent. When this is done, and when this statute is read in conjunction with other relevant statutes and rules, it is clear that, of IDOC employees who work in prisons, only wardens and correctional officers are eligible by law for police officer member status, and thus for Rule of 80 status. Other IDOC employees who work within

prisons, but who fall within like general classifications found throughout state government, are not within the scope of active law enforcement, and are not eligible for police officer member status or Rule of 80 status.

2. An employee currently occupying a police officer member position with Rule of 80 status, whose position is reclassified to that of a general member which does not give rise to Rule of 80 status, retains the benefits he or she has already accrued. As long as the employee remains in that same position, he or she will continue to be deemed to be a police officer member and retain Rule of 80 status for retirement purposes. If the employee moves to a different position, he or she will no longer be deemed to be a police officer member and will lose Rule of 80 status for purposes of accruing future benefits.

## **ANALYSIS**

### **I.**

#### **CLASSIFICATION OF IDOC EMPLOYEES FOR PERSI PURPOSES**

##### **A. Legislative History of Idaho Code § 59-1303**

In 1985, important changes were made to the relevant PERSI statutes by enactment of Senate Bill No. 1161 (SB 1161), as amended (formerly SB 1107). 1985 Idaho Sess. Laws 164. The stated purpose of SB 1161 was to “redefine police officers as they relate to the Public Employee Retirement System.” Testimony in support of the bill was presented to the State Affairs Committee by Bob Venn, then-director of PERSI. He explained to the committee that police officers are engaged in hazardous duties, and that the purpose of the bill was to include additional definitions for police officer member status. When the committee expressed concern that employees who were not in hazardous duties might be included in the police officer category, Senator Batt stated that it was the bill’s objective to remove employees who did not belong in the police officer member category.

SB 1161 included a new section, Idaho Code § 59-1302A, which among other things, dealt with the retirement status of employees of the Idaho Department of Correction (“IDOC”). 1985 Idaho Sess. Laws 164. In 1990, this section was redesignated as Idaho Code § 59-1303. 1990 Idaho Sess. Laws 611. Subsections (2) and (3)(e) of the current Idaho Code § 59-1303 are identical to the same subsections enacted in 1985 as part of SB 1161’s new § 59-1302A, and subsection (4) is nearly identical to its 1985 version. These subsections contain three provisions that are relevant to this analysis.

First, Idaho Code § 59-1303(2) provides that police officer membership status for retirement purposes may be fixed only by law or by order of the Retirement Board.

Second, Idaho Code § 59-1303(3)(e)(v) clarifies that “[e]mployees of the department of correction serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout the state government and not within the scope of active law enforcement service are not eligible for police officer member status.”

Third, Idaho Code § 59-1303(4)(a) authorizes the Retirement Board to designate an employee as a police officer member for retirement purposes when the position held is one in which the principal duties involve “hazardous law enforcement duties.” Idaho Code § 59-1303(4)(a) defined “hazardous law enforcement duties” as “principal duties” which include a probability of early superannuation, are associated with life-threatening risk, involve compelling others to observe the law or pertain to preventing and reducing crime.

#### **B. PERSI Police Officer Member Status as Fixed by Law**

Idaho Code § 59-1303(3)(e) sets forth the categories of IDOC employees who are eligible for police officer member status in PERSI. For purposes of this discussion, these include in subsection (e)(i), the IDOC’s director, the deputy director for probation and parole, and prison wardens. Subsection (e)(ii) describes those employees who work inside prisons, other than wardens, who are eligible for peace officer member status as:

(ii) Employees of the department of correction accountable for the custody, safety, safekeeping or supervision of persons confined in a department confinement facility and whose work station is located within the confinement facility.

*(Emphasis added)*. Subsection (e)(v) describes those IDOC employees not eligible for police officer member status as:

(v) Employees of the department of correction serving in positions of personnel management, accounting, data processing, clerical services and in like general classifications found in departments throughout state government and not within the scope of active law enforcement service are not eligible for police officer member status.

*(Emphasis added)*.

The key determination as to whether an IDOC prison employee is eligible for police officer member status is, then, whether the employee is (1) accountable for the custody, supervision and safety of prisoners, or (2) in a classification found elsewhere in state government and is not within the scope of active law enforcement service. In making this determination, the statutes and rules governing the Idaho Peace Officers Standards and Training Council (POST) are relevant.

In 2005, the Idaho legislature amended Idaho Code § 19-5109 to authorize Idaho POST to establish minimum basic training and certification standards for state correctional and probation and parole offices. 2005 Idaho Sess. Laws 417. In 2006, POST promulgated IDAPA 11.11.04, Rules for Correction, Adult Probation and Parole Officers. IDAPA 11.11.04.010.04 defines “Correction Officer” as any employee of an IDOC facility or private prison contractor “who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility.” IDAPA 11.11.04.052.01 provides that every correctional officer employed after July 1, 2005 must be certified by Idaho POST within one year after being appointed as a correctional officer, unless POST grants additional time to complete certification. IDAPA 11.11.04.052.02 further provides that correctional officers employed prior to July 1, 2005, may be voluntarily certified by Idaho POST, although certification is not required for these officers.

The language used to describe the duties of a certified or grandfathered correctional officer in POST’s administrative rules is very similar to that used to describe those IDOC employees working within a prison who are eligible for police officer status under Idaho Code § 59-1303(3)(e)(ii). Pursuant to POST rules, only those persons certified by Idaho POST as correctional officers, or employed by IDOC for less than one year as correctional officers, or grandfathered in under IDAPA 11.11.04.052.02, may engage in the “first-line supervision, security, protection and risk reduction of offenders” as defined in IDAPA 11.11.04.010.04. Pursuant to Idaho Code 59-1303(3)(e)(ii), only those employees working within a prison who are “accountable for the custody, safety, safekeeping or supervision of persons confined in a department confinement facility” are eligible for police officer member status in PERSI. Both the rule and the statute refer to the same duties - the supervision of inmates and the maintenance of safety and security in a correctional facility. Only correctional officers are authorized to perform these duties. There is no state-wide classification for correctional officers, and only correctional officers are within the scope of “active law enforcement service.”\*

### **C. PERSI Police Officer Member Status as Fixed by the Retirement Board**

Police officer member status in PERSI may also be fixed by the Retirement Board. Relevant to this discussion, Idaho Code § 59-1303(4) provides that a member may be designated by the Board as a police officer member if the position held is “one in which the principal duties involve hazardous law enforcement

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\*A limited and temporary exception to this rule exists. Pursuant to Idaho Code §§ 19-510A and 20-209C, IDOC employees may exercise peace officer authority when they are designated by the Board of Correction and engaging in the transportation of prisoners, the apprehension of prisoners who have escaped or the apprehension and arrest of persons suspected of violating the terms and conditions of their probation or parole. It is our understanding that in practice, these functions are exercised by correctional officers (transporting prisoners, apprehending escapees) or probation and parole officers (apprehending and arresting probation or parole violators), all of whom are subject to POST rules regarding certification.

duties.” As noted earlier, subsection (4)(a) defines "hazardous law enforcement duties" as principal duties which are reasonably expected to increase the probability of early superannuation, or are associated with life-threatening risk, or involve compelling others to observe the law, or pertain to crime prevention or reduction. Subsection (4)(b) provides that where POST certification is required for continued employment, it shall be considered as evidence that the employee is a police officer member. Subsection (4)(c) states that occasional assignments to hazardous law enforcement duties do not create a condition for designation as a police officer member.

Idaho Code § 59-1303(4) is not controlling for IDOC prison employees, whose status is fixed by law. However, it reinforces the conclusion that Rule of 80 status was not intended to be conferred on all IDOC employees working within a prison, but rather to limit that status to those employees engaged in active and hazardous law enforcement duties on a regular, rather than an occasional, basis. These are the type of duties in which only correctional officers are authorized by law to engage.

## II.

### **IMPACT OF CHANGE IN CLASSIFICATION STATUS**

Idaho Code § 59-1303(7) deals with the situation in which a position is reclassified from one that makes the employee eligible for police officer member status to one that makes the employee eligible only for general member status for retirement purposes:

(7) An active member classified as a police officer for retirement purposes whose position is reclassified to that of a general member for retirement purposes as a result of a determination that the position does not meet the requirements of this chapter for police officer status for retirement purposes shall become a general member but shall not lose retirement benefits earned and accrued prior to the reclassification. If that member continues to be employed in that same position until retired, that member then will be deemed to be a police officer member for the purposes of retirement eligibility.

Pursuant to this subsection, an employee in a reclassified position retains the retirement benefits accrued as a police officer member. If the same employee continues to be employed in the same position until retirement, then the employee is deemed a police officer member for purposes of retirement eligibility. In other words, the employee retains what benefits have already accrued, and is eligible for Rule of 80 status if he or she remains in the same position until retirement.

## CONCLUSION

Employees in IDOC positions that are also found in other general classifications in other departments throughout state government are not entitled to Rule of 80 status because they are employees of the IDOC, their work station is located within a correctional facility and they have regular interaction with inmates. Instead, among those IDOC employees working inside prisons, only wardens and correctional officers are entitled to that status.

An employee currently occupying a position with Rule of 80 status, whose position is reclassified to one that does not give rise to Rule of 80 status, does not lose the benefits he or she has already accrued. So long as the employee remains in that position until he or she retires, the employee will remain eligible for Rule of 80 status for retirement purposes.

This analysis is limited to IDOC employees. The involved agencies should commence an immediate review of the classifications of all general category IDOC employees to assure that they meet the necessary criteria for Rule of 80 eligibility. Any such review should include a detailed analysis of relevant job functions in light of the criteria set forth in Idaho Code section 59-1303(3)(e)(ii), (e)(v), and (4)(a)-(c). We encourage the three directors to meet as quickly as possible to develop a plan for such a review.

## AUTHORITIES CONSIDERED

### 1. Idaho Code:

§ 19-510A.  
§ 19-5109.  
§ 20-209C.  
§ 59-1302A.  
§ 59-1303.  
§ 59-1303(2).  
§ 59-1303(3)(e).  
§ 59-1303(3)(e)(i).  
§ 59-1303(3)(e)(ii).  
§ 59-1303(3)(e)(v).  
§ 59-1303(4).  
§ 59-1303(4)(a).  
§ 59-1303(4)(b).  
§ 59-1303(4)(c).  
§ 59-1303(7).

### 2. Idaho Session Laws

1985 Idaho Sess. Laws 164.

1990 Idaho Sess. Laws 611.  
2005 Idaho Sess. Laws 417.

**3. Idaho Administrative Code**

IDAPA 11.11.04.  
IDAPA 11.11.04.010.04.  
IDAPA 11.11.04.052.01.  
IDAPA 11.11.04.052.02.

Dated this 16<sup>th</sup> day of October, 2017.



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