



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

October 25, 2010

Bryan Taylor
Canyon County Prosecutor
1115 Albany
Caldwell ID 83605

Re: Investigation into Caldwell East Urban Renewal Agency (CEURA)

Dear Mr. Taylor:

On February 22, 2010, Canyon County Prosecuting Attorney Chief of Staff Timothy L Fleming requested the Office of Attorney General investigate and review for potential prosecution allegations of misuse of public money by the board members of the Caldwell East Urban Renewal District (CEURA). Our office investigated this matter to ensure that the allegations were fully and fairly reviewed and to determine whether the conduct of the Board warranted the filing of criminal charges. The investigation has now been completed and based upon the findings of our investigation we could not identify any allegations provable beyond a reasonable doubt.

Allegations of misuse of public money against public officials are addressed in Idaho Code §18-5701, *et seq.* Violations of these code sections involving public officers are felonies. Our investigation revealed that two of the complaints did not rise to the level of a criminal violation. CEURA was alleged to have paid over and above the appraised value for certain properties during the Indian Creek Restoration and Downtown Catalyst projects. The complainant alleged that CEURA was overpaying for such property and that CEURA was not allowed to pay more than 10% over the appraised value of the property. Idaho Code § 50-2010 grants Urban Renewal entities broad discretion in the acquisition of property, permitting it through "negotiation or condemnation." The Urban Renewal law does not forbid paying more than the appraised value for property, and the payment of relocation costs is expressly permitted. Idaho Code § 50-2007(d).

Additionally, there does not appear to be criminal culpability for the YMCA pilot project. The pilot project dealt with a grant to Canyon County's largest employers of \$150,000 to help fund sagging enrollment at the YMCA, an entity that CEURA was heavily vested in with time and money. Although generally Idaho's Constitution prohibits the lending of credit and certain types of aid to private corporations by political subdivisions, the Idaho Supreme Court has permitted certain aspects of this conduct as it relates to urban renewal entities. See Article VIII, § 4, Idaho Constitution, see also *Urban Renewal Agency of City of Rexburg v. Hart*, 148 Idaho 229, 222 P.3d 467, 471 (2009). Based on our investigation, we are unable to find any crime that occurred as a result of money being given to the employers to boost enrollment at the YMCA. CEURA had a significant amount of money invested in the YMCA and it appears to be within the board's broad grant of authority under the Urban Renewal law to take steps to protect that investment. Idaho's Misuse of Public money statute requires a private benefit, to the public officer or to others, that is not for the benefit of the public entity. The seed money benefited CEURA's continued support of the YMCA and helped to protect their investment. We find no criminal violation in the use of money for the YMCA pilot project.

The complainant also alleged that CEURA's board members had their gym memberships to the YMCA paid by CEURA. Regarding this allegation, the complainant had a legitimate complaint. This complaint alleges a facially valid criminal violation, because at first glance it involves using public money for a private purpose, a clear violation of Idaho law. Upon further inspection, there is a reasonable argument to be made that the gym memberships were paid in order to facilitate CEURA's inspection of the YMCA's facilities. Regardless of the stated reason, CEURA's board members should have been aware of the potential for their conduct to be illegal. Similarly, government officials should be cognizant of the appearances of such relationships, and reject any "perk" that could be interpreted as influencing their decision-making. Within Idaho, the only entitlement that comes with any government position remains the standard compensation package. Government officials should be skeptical of any "perk" offered them, particularly those offered by entities subject to their regulation. Although these memberships can be rationalized for apparently reasonable measures in fulfilling their inspection duties under the contract, and make any reasonable prosecution impossible, as demonstrated above they are a concern.

Criminal charges are therefore not appropriate given the facts of this case and filing such charges would not serve the interests of justice. Although the judicial system cannot provide those making the allegations any relief, some of their concerns may be appropriately addressed through the legislature. Within the 2010 Legislative Session, numerous bills addressing Urban Renewal were introduced. You may want to recommend that the citizens who brought forth these allegations contact their respective legislators.

If you have any questions about our decision in this case or the investigation please feel free to contact me at (208) 334-2400.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen A. Bywater".

Stephen Bywater,
Deputy Attorney General
Chief, Criminal Law Division