

## **MEMO FROM THE MAYOR**

### **SUBJECT: The Proper Role of Government at the Local Level, Part 2**

#### **At a Glance:**

- The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government. —Thomas Jefferson
- That men do not learn very much from the lessons of history is the most important of all the lessons of history. —Aldous Huxley
- History by apprising [citizens] of the past will enable them to judge of the future; it will avail them of the experience of other times and other nations; it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views. —Thomas Jefferson

#### **Counties Track the Articles of Confederation and Cities Track the Constitution...Sorta**

When we left off last time, we considered Article 4 of the US Constitution dealing with State and Territorial Relations, and specifically Section 4 thereof, that purports to “...guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.”

If we consider a “republican” form of government as similar in function to the Roman Republic *before* it became a tyrannical dictatorship, where the “power” was in the people—at least the landed gentry—we can say that Idaho, indeed, has a “republican form” of government. Although well beyond the scope of this column, a study of the creation of the Roman Republic and its transformation to Empire informs all much about what our nation’s Founders sought in good government and the ills from which they attempted to protect their constituents and follow-on generations when less than honorable officials came to power.

In particular, one might examine Julius Caesar’s attempt to reform the Republic from the time he crossed the Rubicon (49 BC) to his assassination by predominantly Senate conspirators (44 BC), and the bloody aftermath created by the leadership vacuum that followed, culminating in the ascension of Caesar’s great-nephew and adopted son, Gaius Octavian, to the first Roman Emperorship (Caesar Augustus). Through this unfortunate history, the transformation from Roman Republic to Roman Empire was completed, still serves as a cautionary tale.

Closer to home, the Idaho Constitution tells us in Section 2 of Article I that “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they [the people] have the right to alter, reform or abolish the same whenever they deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature.” See? Idaho had a “republican” form of government in an historical sense at all levels.

Regrettably, thanks to “Atomic City” leaving the “incorporated municipality net” of Idaho cities, Idaho is down to a mere 199 cities. While the 199 are as diverse as the state’s topography when it comes to populations—some are large by Idaho standards and some (most, perhaps) are small by any standard—they all have one thing in common: The Idaho Constitution and in the vast majority of instances, the same statutory law to follow.

In our nascent statehood, the Idaho Supreme Court adopted standard Jeffersonian notions concerning why cities exist. Back in 1891, a disgruntled merchant of cigars and spiritous liquors sued what he called the “Inhabitants of the Town of Pocatello”. There, the Idaho Supreme Court noted that city governments exist for “the protection of the lives and property of people in densely populated districts.”

The scofflaw wanting to avoid paying \$100 a month to the “city” to sell his less-than-healthy products, objected to Pocatello’s incorporation by (at that time) the Bingham County Commissioners because the statute allowing for incorporation of specific areas into “cities” required a metes and bound description. The Bingham County Commissioners, on the other hand, allowed Pocatello to incorporate using a description divided up into “sections”.

Notwithstanding, one could easily find Pocatello’s city limit demarcation just as easily using this method as the more cumbersome metes and bounds required by the statute. Hence, the three-justice Supreme Court (only five district judges served the entire state in 1891 because there were only five judicial districts) refused to undo Pocatello’s incorporation over a metes and bounds technicality. Since that time, absent a clear violation of federal or state constitutional law, or, on occasion, a blatant violation of statutory law, the Idaho Supreme Court has conserved and maintained the basic, constitutional function of municipalities: To protect people and their property residing therein.

## **Police Powers and Separate Sovereignty**

Counties and cities derive their regulatory powers from Article XII, Section 2 of the Idaho Constitution under the aegis of the following language: “Any county or incorporated city or town may make and enforce, *WITHIN ITS LIMITS*, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.” (Emphasis supplied). It is here, in the fundamental law empowering both cities and counties that we begin to see the initial separation of the two: each may make and enforce certain laws within their respective jurisdictions.

One also discovers the two general types of powers emanating from our state constitution: Police (governmental) powers and proprietary powers. Perhaps the more prominent of the two powers exercised by municipalities encompasses the “police” powers. These powers grant cities broad regulatory authority within the confines of passing both constitutional and no-state-pre-emption musters, and not being otherwise in conflict with state laws.

We will examine, perhaps, the most significant distinction between cities and counties in some detail next time. Counties constitute creatures of the state legislature with the three commissioners filling the roles of all three branches of government: executive, legislative and judicial. Cities, on the other hand, are created by the people they serve, where the mayor fills the executive role, and the council fills legislative and sometimes “judicial” roles.