

**Lincoln County Commissioners  
Statement of Facts and Findings  
Matter of Commissioner Cresley McConnell Residency**

Statement on November 20, 2017 at 10:00am as recorded in the Lincoln County Commissioners Meeting.

Chairman McConnell recused himself from the meeting and Commissioner Wood acted as Chair.

Commissioner Rebecca Wood;

Last week Commissioners received a determination letter from their law firm along with information from ICRMP, the Attorney General and Commissioner McConnell's lawyer.

Commissioner Wood, acting as Chairman, asked for Commissioners statement of findings and asked Commissioner Hubert to go first.

Commissioner Roy Hubert;

The issue started with two requests that the Commissioners received about Cresley McConnell's residency. An email from Don Hudson and Tammy Swaner on September 18, 2017 and a letter from Crystal Naylor, dated October 3, 2017. Commissioner McConnell recused himself from the issue as well as Prosecutor E. Scott Paul, and Commissioner Hubert and Commissioner Wood were left to take due diligence and hired an attorney, Tug Worst firm.

The Commissioners received a letter from Mr. Worst and they went back one-step further, to review pre-election and post-election statutes. Pre-election statutes being Idaho Code Section 34-617 and 31-702, as quoting Mr. Worst in a letter from October 24, 2017, "Based on the information provided, it appears that this pre-election resident requirement was satisfied by Cresley McConnell."

They then moved on to handle the issue to the Commissioners pertaining to Idaho Code 59-901. Quoting again from Mr. Worst, "Thus if Cresley McConnell at any moment after his election as a Commissioner, ceased to be a resident of the District for which he was elected, then his office as Commissioner should have been automatically deemed vacant."

"2. For purposes of determining whether a vacancy in a County Commissioner seat has occurred, the term resides has its meaning as stated in Idaho Code 34-107, which provides as follows; "Residence," for voting purposes, shall be the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence."

b. The Attorney General's office issued an opinion in 1992 regarding the post-election residency of a County Commissioner from Latah County who got married and lived with

his wife in the County, but not in the District the Commissioner represented.” Side note, this opinion is available on the internet.

Again to quote Mr. Worst;

“c. The Attorney General ultimately decided that although the subject Commissioner was not physically present the majority of the time at his property to be his residence, and had a fixed habitation there, and thus it was the residence, the Commissioner's seat was therefore never deemed vacant.” And in this example the Commissioner had at least a year where he could make improvements on this property.

Again to quote Mr. Worst;

“3. Cresley McConnell had no alternative but to sell his home in the District he represented because it was decreed in a divorce settlement. Like the previous State Attorney General's opinion, he moved in with his wife who was not within his District.

4. Most importantly, what Cresley McConnell's intention have been during all relevant times and what his intentions are today regarding his residency.

a. Cresley McConnell purchased in-District property immediately after the sale of his mandated property sale.”

Commissioner Hubert went back in the letter, under item c., sewer, water and electricity was an important factor that the Attorney General gave his opinion on.

Again to quote Mr. Worst;

“b. He has electricity on his property in his name with a current address. He has a building permit for his in-District property.”

Researching, asking for further information from Commissioner McConnell, in discussion as advised by Attorney. If he were to order a modular home, it could not be delivered until next spring. A stick built home would not be wise during the cold winter months.

After reading the Attorney's letters and the full content of the Attorney General's opinion, it is my contention that Commissioner McConnell has met all of the requirements of the Attorney General's opinion and therefore his Commissioner seat was never deemed vacant.

Commissioner Wood.

Stated she went more strictly by Attorney's recommendations, which are basically, if  $A + B = C$ , then your outcome is Commissioner McConnell is good. If  $A + B = D$ , then Commissioner McConnell is not good and the Commissioners were given specific questions to answer to come to those conclusions. That is what she based her opinion on was the answer to those questions.


Having hired an independent law firm to define the Idaho State Statutes for elected officials and to specifically look into the matter of residency for Commissioner Cresley McConnell and having received the recommendation of that law firm, who also used opinions of law from ICRMP and the Idaho State Attorney General, I feel we have done our due diligence into investigating this matter.

Where Idaho has clear pre-election requirements and post-election requirements and Commissioner McConnell has complied with both pre and post requirements and he has had a room made for his sole use inside his District at all times since his house sold. And, where he has proven to have purchased property in his District, has a building permit and address and electric bill at this property, and where Commissioner McConnell can prove through written and oral contracts from the time previous to the sale of his home, to reside in his elected District. And, where Commissioner McConnell was required to sell his home to satisfy a District Judges orders through divorce hearing, it is clear that he is not out of compliance with the Idaho Statutes on pre- and post-election residency.

Commissioner Wood recommended that they take no further action at this time.


Commissioner Wood spoke with ICRMP that morning as how to handle the situation in the meeting in this unusual situation. ICRMP advised that the Commissioners make a motion to either take further action, or take no action at this time.

Commissioner Hubert made a motion that under this situation that Commissioner Wood and Commissioner Hubert do not take any further action on this matter. Commissioner Wood seconded the motion. Commissioner Wood asked if there was any further discussion. Hearing none a vote was called for. Vote unanimous in favor, motion carries.

  
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Rebecca Wood, Vice-Chair

  
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Roy E. Hubert, Commissioner

Attest:

  
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Brenda Farnworth, Clerk