



Monte R. Woolstenhulme, Ed. S

Superintendent

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August 27, 2021

City of Victor
Att: Mayor Will Frohlich
10 South Main Street
Victor, Idaho 83455

RE: City of Victor Order and Ordinance Requiring Masks

Dear Mayor Frohlich:

This letter is written in response to your Emergency Mask Order and corresponding Victor City Ordinance requiring all persons to wear masks in public buildings, including school district buildings. After consulting with our legal counsel, and for the reasons set forth below, Teton School District No. 401 (“District”), hereby respectfully asserts that the District is an independent governmental entity created under the Constitution and laws of the State of Idaho, and as a result, the City does not have jurisdiction or authority over school district matters.

To summarize the law, Idaho’s school districts operate under the direct supervision of Idaho’s Legislature through its State Board of Education, and school districts therefore act as independent government entities with the corresponding power to sue, tax and otherwise independently govern and direct the method and means of educating Idaho’s children. This grant of independent corporate authority (which is the same authority granted to cities) reflects the policy decision to allow school boards and school administrators to make all decisions affecting the education and health of their students. Correspondingly, the decision on how to best balance the need to effectively educate students and to protect their health and safety while in school is best left to the school board and its administrators. The balancing of education and student health is much different, in both kind and degree, than the balancing of such activities as shopping or dining out with public health. Thus, the District governs what is required in school buildings



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(which are not open to the general public), and the City governs what is required in city owned buildings and other buildings open to the general public.

The delegation of exclusive authority to school districts flows from Idaho's Constitution which: (1) requires Idaho's legislature to create a system of free public schools (Id. Const. Art. IX, § 1); and (2) establishes a State Board of Education which is tasked with the general supervision of Idaho's public school systems, with powers and duties as prescribed by law (Id. Const., Art. IX, § 2).

Following is a brief summary of the legislative scheme that empowers school districts with independent governmental authority, and correspondingly, limits the authority of cities over school districts located within their borders.

To begin, the authority of cities to govern is limited where expressly prohibited by law, or where it would conflict with Idaho law or its constitution:

Cities governed by this act shall be *bodies corporate and politic*; may sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the city; acquire, hold, lease, and convey property, real and personal; have a common seal, which they may change and alter at pleasure; may erect buildings or structures of any kind, needful for the uses or purposes of the city; and *exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.*

I.C. § 50-301.

Here, the City's mask mandate conflicts with "*the general laws or the constitution of the state of Idaho*" by interfering with the District's authority to self-govern and the State Board of Education's Constitutional responsibility to supervise and direct the State's various school Districts.



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To begin, the legislature has vested in the Board of Education the authority and duty to govern and control Idaho's public schools:

For ... *the general supervision, governance and control of the public school systems*, including public community colleges, a state board of education is created. The said board shall be known as the state board of education

For the purposes of section 20, article IV, of the constitution of the state of Idaho, the *state board of education and all of its offices, agencies, divisions and departments shall be an executive department of state government*.

Where the term "state board" shall hereafter appear, it shall mean the state board of education and board of regents of the University of Idaho.

I.C. § 33-101 (emphasis added, non-pertinent portions omitted); *I.C. § 33-107* – General Powers and Duties of the State Board.

Pursuant to legislative authority, school districts are under the direct “supervision and control of the State Board” which is an executive department of the State of Idaho. *I.C. § 33-116*. Thus, the City's mask mandate not only usurps the District's authority to self-govern, it also seeks to supplant the authority and control of the State of Idaho.

Significantly, under Idaho law, a school district, similar to a city, is a “body corporate and politic,” vested with the same powers as a city:

Each school district, now or hereafter established, when validly organized and existing, is declared to be *a body corporate and politic*, and in its corporate capacity may sue and be sued and may acquire, hold and convey real and personal property necessary to its establishment, extension and existence. It shall have authority to issue negotiable coupon bonds and incur such other debt, in the amounts and manner, as provided by law.



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I.C. § 33-301 (emphasis added).

Finally, pursuant to the authority of the Idaho legislature, and in its capacity as an independent body corporate and politic, it is the District's responsibility (having both the authority and duty to act) to protect the health and morals of its students:

33-512. GOVERNANCE OF SCHOOLS. The board of trustees of each school district shall have the following powers and duties: ...

(4) *To protect the morals and health of the pupils; ...*

(Non-pertinent portions omitted).

Thus, given its exclusive authority and responsibility to protect its students at school, the Teton School District respectfully asserts that it is not bound by the Mayor's Order, nor by the City Ordinance requiring the wearing of masks indoors because both conflict with Idaho law and/or the Idaho Constitution, and will instead continue to follow the District's Safe Return to School Plan approved by its elected Board of Trustees.

Respectfully submitted,

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