

**IDAHO
ATTORNEY
GENERAL'S
ANNUAL REPORT**

**OPINIONS
AND
SELECTED INFORMAL
GUIDELINES**

FOR THE YEAR

1985

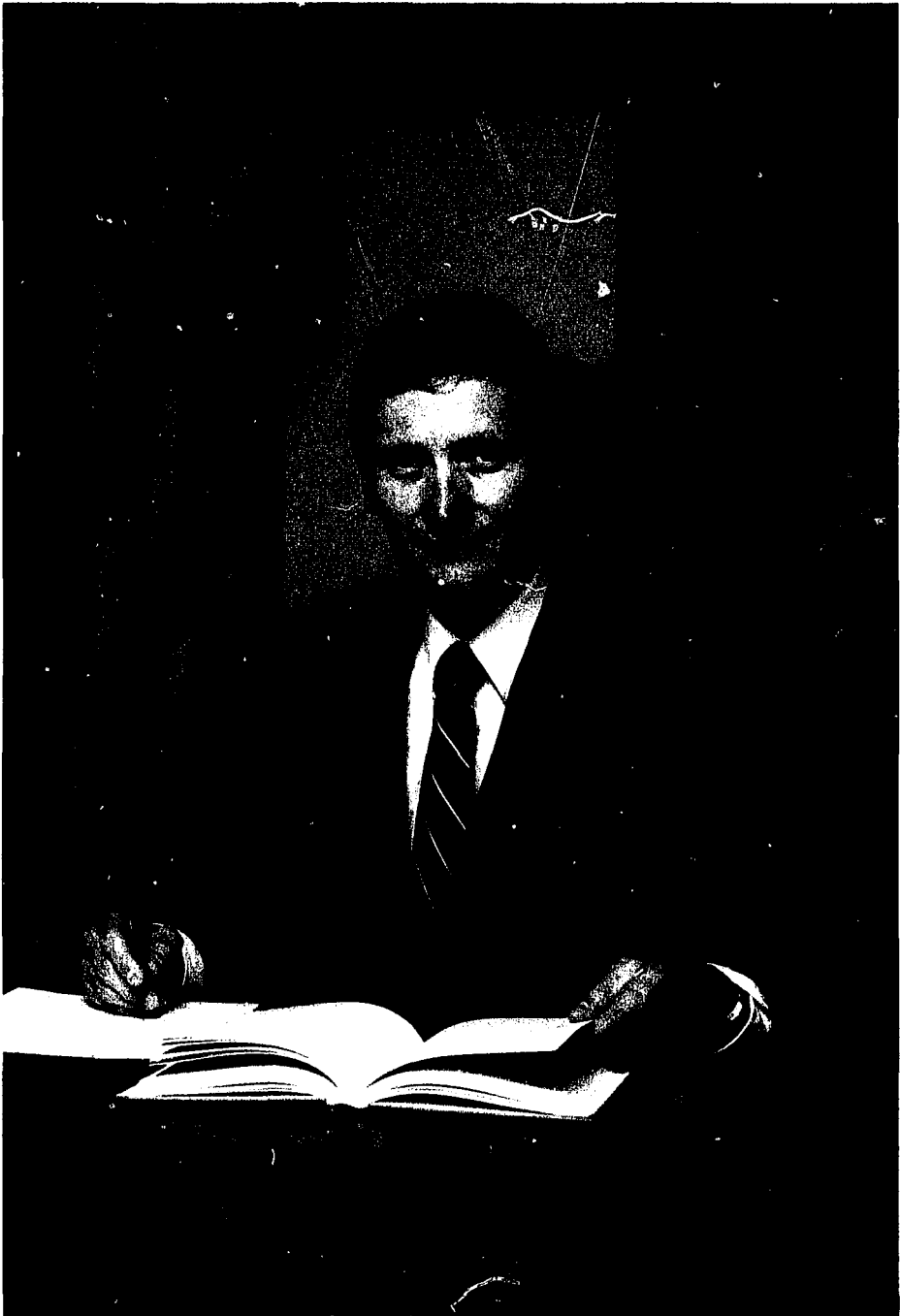
Jim Jones
Attorney General

CONTENTS

Roster of Attorneys General of Idaho	v
Introduction	vii
Roster of Staff of the Attorney General	1
Organizational Chart of the Office of the Attorney General	2
Official Opinions — 1985	5
Topic Index to Opinions	69
Table of Statutes Cited	71
Selected Informal Guidelines — 1985	77
Topic Index to Selected Informal Guidelines	153
Table of Statutes Cited	157
Ten-Year Index — Official Opinions — 1975 to 1985	161
Topic Index	163
Table of Statutes Cited	194
Ten-Year Index — Selected Informal Guidelines — 1975 to 1985	241
Topic Index	243
Table of Statutes Cited	261

ATTORNEYS GENERAL OF IDAHO

GEORGE H. ROBERTS	1891-1892
GEORGE M. PARSONS	1893-1896
ROBERT McFARLAND	1897-1898
S. H. HAYS	1899-1900
FRANK MARTIN	1901-1902
JOHN A. BAGLEY	1903-1904
JOHN GUHEEN	1905-1908
D. C. McDOUGALL	1909-1912
JOSEPH H. PETERSON	1913-1916
T. A. WALTERS	1917-1918
ROY L. BLACK	1919-1922
A. H. CONNER	1923-1926
FRANK L. STEPHAN	1927-1928
W. D. GILLIS	1929-1930
FRED J. BABCOCK	1931-1932
BERT H. MILLER	1933-1936
J. W. TAYLOR	1937-1940
BERT H. MILLER	1941-1944
FRANK LANGLEY	1945-1946
ROBERT AILSHIE (Deceased November 16)	1947
ROBERT E. SMYLIE (Appointed November 24)	1947-1954
GRAYDON W. SMITH	1955-1958
FRANK L. BENSON	1959-1962
ALLAN G. SHEPARD	1963-1968
ROBERT M. ROBSON	1969
W. ANTHONY PARK	1970-1974
WAYNE L. KIDWELL	1975-1978
DAVID H. LEROY	1979-1982
JIM JONES	1983-



Jim Jones
Attorney General

INTRODUCTION

This volume contains the official opinions issued by the Office of the Attorney General during calendar year 1985. Yearly publication of official opinions is required pursuant to I.C. § 67-1401(6). Although not required to do so by statute, we have also included the more significant informal guidelines issued by the Office during 1935.

The opinions and guidelines compiled in this volume are designed to provide legal guidance to all governmental entities and the general public, as well as to the specific addressees. They represent many long hours of research and writings by a dedicated staff and I believe them to be of high quality. Each year, however, we strive to upgrade the quality of our work product and to make this publication more useful to its readers.

In addition to exercising tighter quality control, this year we have added a cumulative index for opinions issued during the last ten years. It is our hope that this will be a helpful research tool for our readers. We also secured passage of legislation to remove the requirement that we publish a docket of our cases in the opinion book. The docket was essentially meaningless. In the 1984 opinion book the docket took up 14 pages.

The opinions of the Office are now available on the Lexis automated research system, making them more widely available for use by the public and private bar. However, we are still exploring the possibility of having our opinions referenced in future publications of the Idaho Code. Since the opinions do have some precedential value and since they do play a large part in shaping administrative policy and legislative action, it would seem that lawyers and jurists should have better access to them through the Code.

If you, our readers, have suggestions to improve the quality of this publication or make it a more useful document, please let us know. Your comments are encouraged and will be considered.

**JIM JONES
ATTORNEY GENERAL**

OFFICE OF THE ATTORNEY GENERAL

As of December 31, 1985

ADMINISTRATIVE

Jim Jones — Attorney General
John J. McMahon — Chief Deputy
Eric J. Fieldstad — Business Manager
Lois Hurless — Administrative Assistant
Tresha Griffiths — Executive Secretary

DIVISION CHIEFS

Michael DeAngelo — Health & Welfare
D. Marc Haws — Criminal Justice
David G. High — Business Affairs/State Finance
Patrick J. Kole — Legislative/Administrative Affairs
Robie G. Russell — Local Government
Clive J. Strong — Natural Resources
Lynn E. Thomas — Appellate
P. Mark Thompson — Administrative Law & Litigation

DEPUTY ATTORNEYS GENERAL

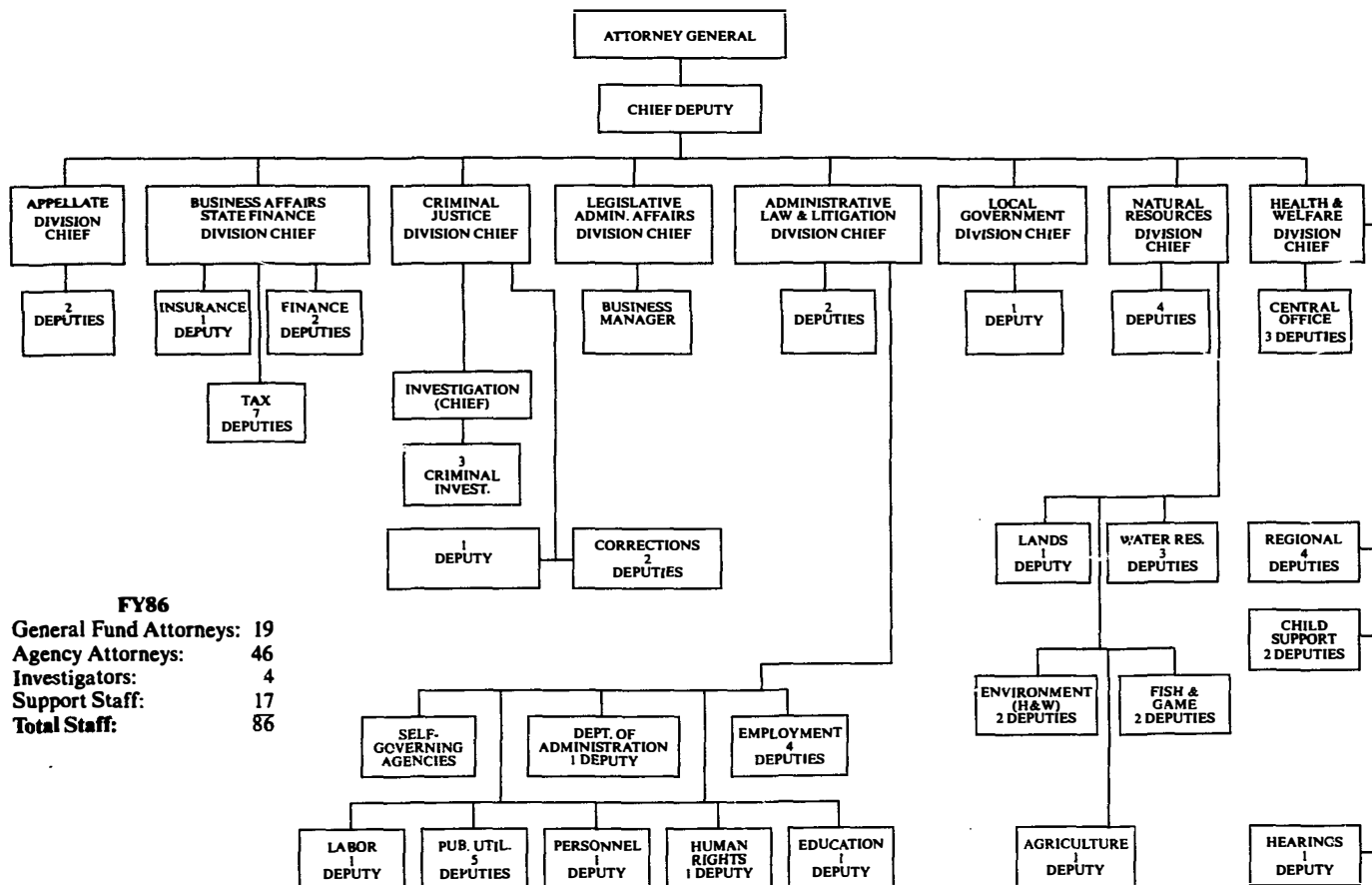
Steve Addington	Stephan Goddard	Peter Richardson
James Baird	Fred Goodenough	John Ruebelmann
David Barber	Jeanne Goodenough	Steven Schuster
Robert Becker	Mark Ingram	Marsha Smith
Jo Beeman	Joseph Jones	Ted Spangler
Carol Brassey	Rinda Just	Myrna Stahman
Sheila Glusco Bush	Dean Kaplan	Susan Stanfield
Dan Chadwick	Wayne Klein	Stephen Stoddard
Jeanne Clary	Cheryl Koshuta	Thomas Swinehart
C. A. Daw	Deborah Kristal	Diane Tappen
William Dillon	Janice Kroeger	Evelyn Thomas
Mary Feeny	Stephan Lord	William VonTagen
Warren Felton	Mark Martin	Larry Weeks
Rene' Fitzpatrick	Roger Martindale	Will Whelan
Curt Fransen	Timothy McNeese	Jim Wickham
Robert Gates	Steven Parry	Scott Wolfley
Michael Gilmore	James Raeon	Dave Wynkoop
Leslie Goddard	Phillip Rassier	

INVESTIGATIVE SERVICE

Russell T. Reneau, Chief Investigator
Allan J. Ceriale Richard T. LeGall Garry Carr

NON-LEGAL PERSONNEL

Jeanne Baldner	Connie Marchwinski	Amber Smith
Kriss Bivens	Elsie O'Leary	Debbie Vance
Karen Bolian	Sigrid Obenchain	Stephanie Wible
Kathy Bonham	Sandra Rich	Deborah Williams
Paula Lund	Jacqueline Shelton	



ATTORNEY GENERAL OPINION NO. 85-1

TO: Commissioner Morgan Munger
Idaho State Tax Commission
Statehouse Mail

Per request for Attorney General Opinion.

QUESTION PRESENTED:

Are personal property tax liens superior to prior perfected purchase money security interests in the same property?

CONCLUSION:

Yes.

ANALYSIS:

Nothing in Article 9 of the Uniform Commercial Code governs the priority between tax liens, which are statutory, and Article 9 security interests. Idaho Code § 28-9-102(2) states: "This chapter does not apply to statutory liens except as provided in Section 28-9-310." Idaho Code § 28-9-310 deals only with the priority of possessory liens in goods subject to security interests where the possessory lien arose from furnishing materials or services with respect to such goods.

The Colorado Supreme Court has considered the priority of personal property tax liens compared to Article 9 security interests. In *Moorehead v. John Deere Industrial Equipment Co.*, 194 Colo. 398, 572 P.2d 1207, 23 UCC Rep. Serv. 505 (1977, Reh. den. 1978), the court held that a tax sale of personal property for delinquent personal property taxes vested clear title in the tax sale purchaser and extinguished all prior liens and encumbrances. The tax sale purchaser was competing with and prevailed over a prior perfected security interest. The court stated:

It is an established principle of real property law in Colorado that a treasurer's deed issued pursuant to a valid tax sale extinguished all prior liens, encumbrances, and other charges against the real property and conveys a new and paramount title to the grantee.

* * *

In enacting the present personal property tax sale statute in 1964, the General Assembly apparently decided to track the language from its real property counterpart. Colo Sess Laws 1964, ch 94, § 137-10-11(7) at 720. This use of almost identical language indicates a legislative intent that the purchaser at the personal property tax sale should receive the same unencumbered, new, and paramount title as that received by a grantee of a treasurer's deed. We so hold.

* * *

Important policy considerations support our decision. We note the fundamental necessity for the unimpaired collection of general tax revenues for the support of our government. An interpretation of the statute which would render the tax collection provisions less effective should not be adopted unless clearly indicated by the statutory language employed.

* * *

Thus, we are irresistibly led to the conclusion that public policy and prior case law dictate that a treasurer's certificate of purchase, issued pursuant to a sale of personal property, extinguishes all prior liens and encumbrances.

194 Colo. at 401, 402.

Although the issue addressed by the court dealt with whether the prior security interests were extinguished by the tax sale, these results were derivative from the lien priorities. At all types of foreclosure sales, higher priority liens are preserved, lower priority liens are discharged. The court was, in essence, holding that the tax liens were first priority. The court looked to the tax statutes to determine the priority.

Pre-Code law looked to the statute imposing the tax lien to determine the tax lien's comparative priority. Generally, the tax laws gave first priority to the tax lien. These issues are discussed in 3 T. Cooley, *The Law of Taxation*, § 1240, pp. 2467-2472 (4th ed., 1924). Professor Cooley states:

Not only is it competent for the state to charge property with a lien for the taxes imposed thereupon, but the legislature may, if it shall deem it proper or necessary to do so, make the lien a first claim on the property, with precedence of all other claims and liens whatsoever, whether created by judgment, mortgage, execution, or otherwise, and whether arising before or after the assessment of tax. . . .

This statutory priority generally extends to prior mortgage liens so as to subordinate such liens to tax liens. So the priority may be given to liens for a personal property tax. When a preference is given, the lien does not stand on the same footing with an ordinary encumbrance, but attaches itself to the res without regard to individual ownership, and if enforced by sale of the land the purchaser will take a valid and unimpeachable title. (Cites omitted).

In order to determine the relative priority of personal property tax liens, it is necessary to review the Idaho statutes imposing the lien and the case law interpreting those statutes.

The basic authority to levy ad valorem taxes is given in Article VII, § 2, of the Idaho Constitution which provides in relevant part as follows:

§ 2. Revenue to be provided by taxation. — The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. . . .

The importance of these taxes in the scheme of state government is declared in Article VII, § 7, of the Idaho Constitution, which provides:

§ 7. State taxes to be paid in full. — All taxes levied for state purposes shall be paid into the state treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes.

This section has been held to be self-implementing. *Cunningham v. Moody*, 3 Idaho 125, 28 P. 395 (1891). In *Kieldsen v. Barrett*, 50 Idaho 466, 297 P. 405 (1931) (hereafter, *Kieldsen*) the Idaho Supreme Court held, in part, that this section mandated first priority for tax liens. The court stated:

Tax liens on real property cannot be made subordinate to other liens without disregarding sec. 7, Art. VII, of Idaho Const.

50 Idaho at 472.

The court went on to hold that the maximum priority the legislature could grant to other state liens was co-equal priority with tax liens.

The constitutional authorizations have been implemented and augmented by statute. Idaho Code § 63-102 is the statutory foundation for the ad valorem tax system. The relevant part of that statute reads:

63-102. Lien of taxes — All property subject to assessment shall be assessed annually for taxation . . . under the provisions of this act, . . . on the first day of January . . . All taxes levied upon real estate under the provisions of this act, shall be a lien upon the real property assessed, and all taxes levied upon personal property shall be a lien upon the personal property assessed and upon any other personal or real property of the owner thereof within the county where assessed, . . . which several liens attach as of the first day of January in that year, *and shall only be discharged by the payment, cancellation or rebate of the taxes as provided in this act:* . . . (Emphasis added).

Idaho Code § 63-102 gives priority to all ad valorem taxes for all state, county or local purposes. The authority to extend priority to county and local taxes was upheld in *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

The state taxes, by the constitution, and the county and city taxes, by legislative declaration, are prior to the special assessment, and this court has, in effect, so held. (cites omitted).

47 Idaho at 707.

The *Kieldsen* case dealt with ad valorem taxes on real property. However, the constitutional provision regarding priority and the statutory language limiting discharge to payment, cancellation or rebate apply equally to personal property ad valorem

taxes. As the underlying policies are identical, there should be no difference between the treatment of real and personal property ad valorem taxes. In *Scottish American Mortgage Co., Ltd., v. Minidoka County*, 47 Idaho 33, at 41, 272 P. 498 (1928), the Idaho Supreme Court indicated that if faced with the issue it would declare the personal property tax lien to be first priority over antecedent encumbrances.

Scottish American Mortgage goes on to hold that where uncollected personal property taxes are extended on the real property rolls, the lien that arises is governed by first-in-time, first-in-right priorities. The court discussed, but did not decide, the relative priority of the tax lien that arises when one item of personal property is encumbered for the taxes accruing on other items of personal property.

Determining that personal property tax liens are entitled to first priority is consistent with the structure of ad valorem taxes. The taxes are a direct charge on the property rather than security for a personal liability. As no personal liability is involved, no determination of the taxpayer's interest in the property is necessary. The tax is attached to the res. This rule prevents private parties from defeating the tax by allocating the entire equity in the property to a prior lienholder.

CONCLUSION:

In Idaho, personal property tax liens are entitled to first priority, even over antecedent encumbrances, including prior perfected purchase money security interests. Idaho tax statutes provide this priority and are not contradicted by Article 9 of the UCC or any Pre-Code law.

AUTHORITIES CONSIDERED:

1. Id. Const. art. VII, §§ 2, 7.
2. Idaho Code § 63-102.
3. *Kieldsen v. Barrett*, 50 Idaho 466, 297 P. 405 (1931).
4. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).
5. *Scottish American Mortgage Co., Ltd., v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928).
6. *Cunningham v. Moody*, 3 Idaho 125, 28 P. 395 (1891).
7. *Moorehead v. John Deere Industrial Equipment Co.*, 194 Colo. 398, 572 P.2d 1207, 23 U.C.C. Rep. Serv. 505 (1977, Reh. den. 1978).
8. 3 T. Cooley, *The Law of Taxation*, § 1240, pp. 2467-2472 (4th ed., 1924).

DATED this 27th day of February, 1985.

ATTORNEY GENERAL
STATE OF IDAHO
JIM JONES

ANALYSIS BY:

C. A. DAW
Deputy Attorney General

CAD: 6531J

CC: Idaho Supreme Court
Supreme Court Law Library
Idaho State Library

ATTORNEY GENERAL OPINION NO. 85-2

TO: A. Kenneth Dunn, Director
Department of Water Resources
Statehouse Mail

Per Request for Attorney General's Opinion.

QUESTION PRESENTED:

Does the Idaho Water Resource Board have the authority to issue revenue bonds for the purpose of loaning the proceeds to a local water project sponsor to construct a hydroelectric power project which serves no other water development, usage or conservation purposes?

CONCLUSION:

Yes. The Idaho Water Resource Board has the authority to issue revenue bonds for the purpose stated in the question presented. Idaho Code § 42-1734(x) authorizes the board to issue the proceeds of the sale of revenue bonds to local water project sponsors. Since there is no statutory language evidencing a contrary intent, the term "water project" must be construed to encompass purely hydroelectric power projects.

ANALYSIS:

The Idaho Resource Board was established pursuant to the provisions of article 15, section 7, of the Constitution of the State of Idaho. Idaho Code section 42-1732 establishes the board as the constitutional agency within the department of water resources. Thus, the board, while operating within the department of water resources, has its own constitutional and legislative existence and duties. Idaho Code § 42-1734(x) authorizes the board to issue revenue bonds:

To loan without prior legislative approval, the proceeds of the sale of revenue bonds to the local water project sponsor or sponsors; to enter into lease, sale or loan agreement; and to purchase all or a portion of, or participate in, loans, originated by private lending institutions.

The determinative question is whether the term “water projects” encompasses a hydroelectric project that has no irrigation benefits. The legislature did not include a definition of “water project” in the act now in question and legislative history concerning the act is scant and inconclusive. Furthermore, research reveals no case law that would be helpful in the matter. Therefore, it is necessary to glean the meaning of the words, applying well-recognized rules of statutory construction.

In construing statutes the Idaho Supreme Court has enunciated the following principles:

In the absence of some manifestation to the contrary we must assume the legislature intended the ordinary import of the words it used. *Nicolaus v. Bodine*, 92 Idaho 639, 641, 448 P.2d 645, 647 (1968).

When the language used in a statute has a definite, clear meaning and applies to a certain case, the courts must give effect to that meaning whether or not the individuals comprising the legislature anticipated the result. *Unity Light & Power Company v. City of Burley*, 83 Idaho 285, 289, 361 P.2d 788, 790 (1961).

In construing a statute, it is the duty of this court to ascertain the legislative intent, and give effect thereto. In ascertaining this intent, not only must the literal wording of the statute be examined, but also account must be taken of other matters, “such as the context, the object in view, the evils to be remedied, the history of the times and of the legislation upon the same subject, public policy, contemporaneous construction, and the like.” *Messenger v. Burns*, 86 Idaho 26, 29-30, 382 P.2d 913, 915 (1963).

The most fundamental premise underlying judicial review of the legislature’s enactments is that, unless the result is patently absurd, the courts must assume that the legislature meant what it said. Where a statute is clear and unambiguous the expressed intent of the legislature must be given effect. *State, Department of Law v. One 1955 Willys*, 100 Idaho 150, 153, 595 P.2d 299, 302 (1979).

A statute is to be construed in consideration of the reason for the statute, its object and purpose and thereby ascertain and render effective the legislative intent. *State v. Hoch*, 102 Idaho 351, 352, 630 P.2d 143, 144 (1981).

Examining the act in question with the above quoted principles in mind mandates a conclusion that the board has the authority to issue revenue bonds for the purpose of loaning the proceeds to a local water project sponsor of a hydroelectric project.

Article 15, section 7, of the Constitution of the State of Idaho vests the Water Resource Agency with certain enumerated powers. It reads as follows:

There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe, which shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest; to construct and operate water projects; to issue bonds, without state obligation, to be repaid from revenues of projects; to generate and wholesale hydroelectric power at the site of production; to appropriate public waters as trustee for Agency projects; to acquire, transfer and encumber title to real property for water projects and to have control and administrative authority over state lands required for water projects; all under such laws as may be prescribed by the Legislature.

The above quoted amendment to the state constitution, passed in 1964, charges the agency with the responsibility to “implement a state water plan for *optimum development of water resources in the public interest*. . . .” (Emphasis added.) Such a plan must include both the most efficient utilization of hydroelectric power, and also the most efficient method of generating hydroelectric power.

Article 15, section 7, also authorizes the Water Resource Agency “to generate and wholesale hydroelectric power at the site of production. . . .” This authority is not limited to hydroelectric power projects with associated irrigation benefits. It would appear incongruous, absent a specific prohibitory provision, if the board’s parallel authority to participate in the indirect financing of local hydroelectric power through revenue bonds was limited to projects with irrigation benefits.

Idaho Code § 42-1731 reads as follows:

The welfare of the people of this state is dependent upon conservation, development and optimum use of our water resources. To achieve this objective and protect the waters of Idaho from diversion out of state, it is essential that a coordinated, integrated, multiple use water resource policy be formulated and a plan developed to activate this policy as rapidly as possible. It is in the public interest that these functions be carried out by a single state agency.

The issuance of revenue bonds for local hydroelectric projects conforms to this declaration of intent. The issuance of said bonds will enable the state to develop the optimum use of its water resources and protect the waters of Idaho from diversion out of state.

Idaho Code § 42-1734(s) also gives some guidance to this question. It states in pertinent part that the agency is empowered to “issue revenue bonds for the rehabilitation and repair of existing irrigation projects and irrigation facilities, *and* for water projects, . . .” (Emphasis added.) If the term “water project” was intended to mean only irrigation projects, the above quoted language would be superfluous.

Although no definition of “water project” exists within the act in question, the term is defined for purposes of the code sections concerning the revolving development fund. Idaho Code § 42-1751(d) states:

“Project” means any project by means of which water should be utilized or benefits accrue within this state for purposes within the limitations of this act.

Obviously, any hydroelectric project would have to utilize water within this state and, if found worthy of revenue bond support by the board, would be for purposes within the limitations of this act.

On April 15, 1983, the Water Resource Agency adopted rules and regulations in order to administer the revenue bond program. Rule 2, 3 defines an eligible program as follows:

“Eligible project” means a project in Idaho in conformance with the State Water Plan developed pursuant to Article 15, Section 7, Idaho Constitution, which has been approved for financing by an eligible financial institution. Projects may include but are not limited to the drainage or irrigation of agricultural property, the provision of domestic and municipal water supplies, energy production, flood control, fish and wildlife, recreation, agriculture, or water quality. Projects with multiple water uses are encouraged, however, secondary water uses that could be included in a multi-purpose project shall be consistent with the primary purpose.

Thus, while priority is given to “projects with multiple water uses,” the agency believes it has the authority to issue revenue bonds for projects with the single purpose of “energy production.” Although the agency’s interpretation is by no means controlling, it should be given deference:

A construction given a statute by executive or administrative officers of the state is entitled to great weight and will be followed by the court unless there are cogent reasons for holding otherwise. *Idaho Public Utilities Commission v. V-1 Oil Company*, 90 Idaho 415, 420 P.2d 581, 583 (1966).

In the instant case there are no cogent reasons for holding otherwise. The authority to issue revenue bonds is consistent with the broad powers and duties given to the Water Resource Agency by the state constitution and legislative enactment.

Besides deciding whether the board has the authority to issue said bonds, it must also be determined whether the issuance of revenue bonds is constitutionally permissible. However, examination of the issue in detail in this opinion is not necessary. The Idaho Supreme Court has already decided that the issuance of revenue bonds is constitutionally permissible. *Idaho Water Resource Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976). The issuance of revenue bonds for hydroelectric projects is authorized by statute and constitutionally permissible.

SUMMARY:

Idaho Code § 42-1734(x) authorizes the board to issue revenue bonds to a local water project sponsor. The term “water project” is not defined. However, the act in question manifests no legislative intent to exclude purely hydroelectric projects from

within the definition. It is statutorily authorized and constitutionally permissible for the Idaho Water Resource Board to issue revenue bonds to a local water project sponsor to construct a hydroelectric power project which serves no other water development, usage or conservation purpose.

AUTHORITIES CONSIDERED:

1. *Idaho Constitution*

Art. 15, § 7.

2. *Idaho Code*

Sections 42-1731, 42-1732, 42-1734(s), 42-1734(x), 42-1751(d).

3. *Idaho Cases*

- a. *Unity Light & Power Company v. City of Burley*, 83 Idaho 285, 289, 361 P.2d 788, 790 (1961).
- b. *Messenger v. Burns*, 86 Idaho 26, 29-30, 382 P.2d 913, 915 (1963).
- c. *Idaho Public Utilities Commission v. V-1 Oil Company*, 90 Idaho 415, 420, 412 P.2d 581, 583 (1966).
- d. *Nicolaus v. Bodine*, 92 Idaho 639, 641, 448 P.2d 645, 647 (1968).
- e. *Idaho Water Resource Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).
- f. *State, Department of Law v. One 1955 Willys*, 100 Idaho 150, 153, 595 P.2d 299, 302 (1979).
- g. *State v. Hoch*, 102 Idaho 351, 352, 630 P.2d 143, 144 (1981).

4. *Other Authorities*

Idaho Water Resource Agency Rules and Regulations, Rule 2, 3, (April 15, 1983).

DATED this 31st day of May, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

STEVEN L. ADDINGTON
Deputy Attorney General
Natural Resources Division

ATTORNEY GENERAL OPINION NO. 85-3

TO: Mr. Stanley F. Hamilton
Director
Department of Lands
STATEHOUSE MAIL

Per Request for Attorney General's Opinion.

Regarding: Idaho Code § 58-140

QUESTION PRESENTED:

Idaho Code § 58-140 provides that up to 10% of the income from state timber sales, grazing leases, and recreation site leases upon state lands shall be paid to a special fund to be used for maintenance, management, and protection of such state owned lands. Most of such lands are endowment lands. Should proceeds from endowment lands be accounted for and invested separately from other state funds so that any interest income earned thereon benefits the endowment lands or endowment funds rather than the general fund?

CONCLUSION:

Until July 1, 1985, the special fund provided by Idaho Code § 58-140 is consolidated in the state operating fund, pursuant to Idaho Code § 57-804. Interest upon idle funds in the state operating fund is paid to the general fund. Idaho Code § 57-804 was repealed by Ch. 195, 1985 S.L., effective July 1, 1985. Thereafter, the state auditor is authorized to classify accounts within the funds established by Idaho Code § 57-803.

To avoid violation of constitutional and land grant provisions, the special fund should be consolidated in the agency asset fund so that interest will be accounted for separately for the benefit of the account.

Accordingly, we recommend that effective July 1, 1985, the state auditor transfer the special fund from the state operating fund to the agency asset fund.

ANALYSIS:

Management and control of state lands is vested in the state board of land commissioners pursuant to Idaho Const. art. 9, §§ 7 and 8. Article 9, § 7 provides:

The governor, superintendent of public instruction, secretary of state, attorney general and state auditor shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

Idaho Const. art. 9, § 8, provides, in pertinent part:

It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted; . . . The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; . . .

Thus, the constitution imposes a duty upon the board of land commissioners to provide for the location, protection, sale and rental of land grants in such a manner as to secure maximum long-term financial return therefrom. The constitution imposes a duty upon the legislature to provide laws such that land grants shall be judiciously located, carefully preserved, and held in trust to further the purposes of the land grants. Also, the legislature is required to provide for the sale of lands and timber and to provide for the faithful application of the proceeds thereof in accordance with the terms of the land grants.

Idaho Code § 58-140 provides a statutory funding mechanism to carry out this constitutional mandate. The section provides, in pertinent part:

A reasonable amount not to exceed ten per centum (10%) of the moneys received from the sale of standing timber, from grazing leases and from recreation site leases shall constitute a special account, which is hereby created to be used for maintenance, management and protection of state owned timber lands, grazing lands and recreation site lands: provided, that any moneys constituting part of such account received from a sale of standing timber or from leases of lands which are a part of any endowment land grant shall be used only for the maintenance, management and protection of lands of the same endowment grant. Provided further, that all such funds collected from timber sales shall be expended solely for the purpose of management, protection and reforestation of state lands. All such funds collected from recreation site leases shall be expended for the maintenance, protection and improvement of both new lease sites, and existing recreation areas situate on state lands. All such funds collected from grazing leases shall be expended for the maintenance, management and protection of state owned grazing lands. Control and eradication of noxious weeds is a part of the maintenance, protection and improvement programs.

The state board of land commissioners is hereby authorized to establish rules and regulations fixing a percentage of the amount received from each sale of standing timber and from each grazing and recreation site lease, not to exceed ten per centum (10%) of the total, which shall constitute the special account herein created. The account shall be deposited with the state trea-

surer, who shall keep a record thereof which shall show separately moneys received from each category of endowment lands. All moneys deposited in the account are hereby appropriated continually to the state board of land commissioners for the purposes hereinabove enumerated.

The statute provides a reasonable funding mechanism to carry out the state's obligation to carefully preserve and protect lands granted to the state.

However, as noted previously, the constitution also provides that the lands are held in trust and the proceeds therefrom must be faithfully applied in accordance with the terms of the grant.

In *Roach v. Gooding*, 11 Idaho 244, 81 P. 642 (1905), the Idaho Supreme Court considered the state's trust responsibility to apply proceeds from the sale of university grant lands only for support and maintenance of the University of Idaho. Specifically, the court considered the constitutionality of a statute which provided for repayment of university building bonds from the income from university land grants. The court held:

I must therefore conclude that the legislature had no power or authority to appropriate or set apart for the payment of the interest or principal of the bonds referred to any part of the proceeds of the permanent fund created by the sale of the whole or any part of said seventy-two sections of land or the timber thereon.

11 Idaho at 255.

Thus, the court required endowment fund proceeds to be strictly applied to the purposes enumerated in the constitution. In a number of cases since *Roach*, supra, the Idaho Supreme Court has carefully guarded the endowment lands and endowment funds. For example, in *Pike v. State Board of Land Commissioners*, 19 Idaho 268, 113 P. 447 (1911), the court upheld the board's practice of requiring an agreement to bid a given price as a condition precedent to advertising lands for sale.

In *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914), the court pointed out that the grant of lands by the federal government to the state constitutes a trust fund. Therefore, the state board of land commissioners is bound by trust principles to administer the lands to secure the greatest measure of advantage to the beneficiary.

It was held in *Hellerud v. Hauck*, 52 Idaho 226, 13 P.2d 1099 (1932), that title to school grant lands could not be acquired by adverse possession against the state no matter how long adversely occupied. Thus, the cases reflect a consistent judicial policy of protecting the interest of the beneficiaries of endowment land grants and requiring a strict application of trust principles for the benefit of beneficiaries of endowment land grants.

The Idaho Supreme Court has further ruled that proceeds of endowment lands may only be applied by the legislature in furtherance of the purposes of the endowment. In *Evans v. VanDeusen*, 31 Idaho 614, 174 P. 122 (1918), the court considered

appropriations to institutions under the control of the state board of education. The appropriations provided essentially that the amount of general fund appropriations would be reduced in an amount equal to the amount of endowment fund income earned and available to the institutions. Endowment fund earnings were separately appropriated to the institutions by means of a continuing appropriation.

The court denied the application for a writ challenging the method of appropriation and the accounting practices used to implement it. The court determined that the method utilized did not divert endowment funds from endowment purposes. In discussing the nature of endowment funds and the legislature's duty not to divert them for other purposes the court said:

The funds referred to being declared by the constitution to be trust funds, are not, strictly speaking, subject to appropriation. They were appropriated or set apart for certain purposes designated by the terms of the grants which had been accepted by the state. The legislature, however, is required to provide the method by which they may be made available for such special purposes, and to that extent only are the funds subject to what may be called an appropriation. The courts are not concerned with the methods which the legislature may provide, further than that, upon proper proceedings therefor, they will prevent the diversion of the funds from the objects or purposes for which they have been granted.

31 Idaho at 620.

While the legislature is accorded some flexibility in providing the methods of making endowment funds available, both the *Evans* case and the *Roach* case discussed previously hold that the legislature may not divert those funds for purposes other than those authorized by the constitution and federal grants.

As noted previously, Idaho Code § 58-140 creates a special fund from a portion of the proceeds of timber sales and lease payments. The statute provides a reasonable funding mechanism to carry out the land board's constitutional duty to carefully preserve and protect endowment lands. However, as the cases point out, the funds cannot be diverted for purposes not authorized by the constitution and provisions of the land grants. We must, therefore, examine the statutory provisions to determine whether they result in a diversion of endowment interest earnings for unauthorized purposes.

Idaho Code § 57-804(2) provides, in pertinent part:

The following funds and money existing on June 30, 1977, are consolidated into the state operating fund:

Auditor's Fund Number	Name of Fund	Created by Idaho Code Section
* * * * *		
266	Ten Percent Timber and Grazing Land Lease Fund	58-140

Idaho Code § 57-803(a) provides:

The state operating fund is hereby created and established in the state treasury. The state operating fund is to be used to account for moneys which are not necessarily restricted in use or purpose, and which are generally utilized to finance the ordinary functions of state government.

The statutes above-quoted improperly classify the 10% timber and grazing land lease fund within the state operating fund. As the cases discussed previously point out, proceeds from endowment lands are trust funds constitutionally restricted in use and purpose and are not utilized to finance the ordinary functions of state government.

Also, there are no provisions in Idaho Code §§ 57-803(a), 57-804, or 58-140 providing for interest earnings to accrue to the benefit of the 10% timber and grazing land lease fund. Interest earnings upon idle funds in the state treasury are paid to the general fund pursuant to Idaho Code § 67-1210.

In our opinion, the 10% timber and grazing land lease fund should properly be placed within the agency asset fund.

The agency asset fund is created and defined by Idaho Code § 57-803(n) as follows:

The agency asset fund is hereby created and established in the state treasury. The agency asset fund is to be used to account for moneys which are restricted in use or purpose, and which must or may be, invested and accounted for as separate entities, and are not accounted for in any other fund.

Placing the 10% timber and grazing land lease fund in the agency asset fund would satisfy constitutional requirements since the fund is designed to handle accounts which are restricted in use and purpose. Accounts within the fund are accounted for as separate entities by the state treasurer. Unlike the state operating fund, the agency asset fund provides the necessary accounting mechanisms to attribute interest earnings to particular accounts.

A fundamental rule of trust law is that a trustee must separately account for trust property and funds and must not use trust property or funds in his trade, business, or private affairs or the business affairs of any other person unless authorized by the terms of the trust. Any profit or gain resulting from his own use of trust funds inures to the trust estate. See e.g., *McComb v. Frink*, 149 U.S. 629, 13 S.Ct. 993, 37 L.Ed. 867 (1893); *Bruun v. Hanson*, 103 F.2d 685 (C.A. Idaho, 1940), cert.den. *Hanson v. Bruun*, 308 U.S. 571 (1939), 60 S.Ct. 86, 84 L.Ed. 479; *Nampa Investment Corp. v. Demming Explor. Co.*, 50 Idaho 46, 293 P. 326 (1930); *Restatement, Trusts*, 2d § 179.

Since the existing statutes permit the use of trust funds to generate income for the general account, they appear to violate trust principles. However, the current statutorily required classification of the account within the state operating fund is repealed by Ch. 195, 1985 S.L., effective July 1, 1985. Thereafter, the state auditor is

authorized to classify accounts in the various funds enumerated in Idaho Code § 57-803. On the effective date of the Act, the state auditor should reclassify the 10% timber and grazing land lease fund in the agency asset fund to conform the state's accounting practices to those contemplated by the Idaho Constitution.

AUTHORITIES CONSIDERED:

Idaho Const. art. 9, §§ 7 and 8

Idaho Code § 58-140

Idaho Code § 57-803,(a),(n)

Idaho Code § 57-804(2)

Idaho Code § 67-1210

Idaho Code § 57-811(4)

Ch. 195, 1985 Session Laws

Restatement, Trusts, 2d § 179

Roach v. Gooding, 11 Idaho 244, 81 P. 642 (1905)

Pike v. State Board of Land Commissioners, 19 Idaho 268, 113 P. 447 (1911)

Barber Lumber Co. v. Gifford, 25 Idaho 654, 139 P. 557 (1914)

Hellerud v. Hauck, 52 Idaho 226, 13 P.2d 1099 (1932)

Evans v. VanDeusen, 31 Idaho 614, 174 P. 122 (1918)

McComb v. Frink, 149 U.S. 629, 13 S.Ct. 993, 37 L.Ed. 867, (1893)

Bruun v. Hanson, 103 F.2d 685 (C.A. Idaho, 1940) cert.den. *Hanson v. Bruun*, 308 U.S. 571, 60 S.Ct. 86, 84 L.Ed. 479 (1939)

Nampa Investment Corp. v. Demming Explor. Co., 50 Idaho 46, 293 P. 326 (1930)

DATED this 17th day of June, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

Mr. Stanley F. Hamilton
Director
Department of Lands

ANALYSIS BY:

DAVID G. HIGH
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

ATTORNEY GENERAL OPINION NO. 85-4

TO: Mr. William G. Hepp
Investment Manager
Endowment Fund Investment Board
STATEHOUSE MAIL

Per Request for Attorney General's Opinion.

Regarding: Idaho Code § 57-722(3)(b)

QUESTIONS PRESENTED:

1. Whether Idaho Code § 57-722(3)(b) is constitutional?
2. What authority does the State Treasurer have as custodian of the public school fund to: (a) question the investments made by the Board through its Investment Manager who has been granted discretionary authority regarding investments; and (b) to refuse to open accounts as instructed by the Investment Manager for securities which clearly qualify for investment pursuant to Idaho Code § 57-722, specifically subsections (3)(b) and (8)?

CONCLUSIONS:

1. Idaho Code § 57-722(3)(b) authorizes investment in money market mutual funds whose assets are limited to obligations of the United States or any agency or instrumentality thereof. Such investments are constitutionally permitted, provided that the money market mutual fund meets two requirements. First, it must unconditionally guarantee full repayment of principal and interest as required by Idaho Const. art. IX, § 11. Second, the state must not directly or indirectly become a stockholder in any association or corporation. These determinations must be made on a case-by-case basis following review of the particular investment agreement and prospectus.
2. Responsibility for choice of legally permissible investments is vested in the board. The state treasurer has a custodial responsibility to safeguard fund assets entrusted to her care. This responsibility is broad enough, at a minimum, to refuse to

open accounts or transfer funds for clearly illegal investments. As to investments which the treasurer believes are possibly illegal, we recommend that the transaction be completed and that legal resistance, if any, to a board request for investment be limited to judicial review of the question.

ANALYSIS:

Question 1

The question presented is whether Idaho Code § 57-722(3)(b) violates the Idaho Constitution. Idaho Code § 57-722(3)(b) provides:

The board or its investment manager(s) may, and they are hereby authorized to, invest the permanent endowment funds of the state of Idaho in the following manner and in the following investments or securities and none other:

* * *

(b) Money market mutual funds whose assets are limited to obligations of the United States or any agency or instrumentality thereof.

Idaho Constitution art. IX, § 11, sets forth the primary constitutional limitation upon permissible investments of the permanent endowment funds. That section provides:

The permanent endowment funds other than funds arising from the disposition of university lands belonging to the state, *shall be loaned* on United States, state, county, city, village, or school district bonds or state warrants or on such other investments as may be permitted by law under such regulations as the legislature may provide. (Emphasis added)

The leading case construing this section's limitations upon investments is *Engelking v. Investment Board*, 93 Idaho 217, 458 P.2d 213 (1969). In that case, the Idaho Supreme Court held that §§ 9(6) and 9(8) of S. B. 1277 (S. L., 1969), which permitted purchase of stock and conversion of convertible bonds, violated Idaho Const. art. VIII, § 2, and art. IX, § 11.

In construing Idaho Const. art. IX, § 11, the court found that the legislature was limited to authorizing *loans* of endowment funds in view of the operative verb "shall be loaned" which is used in that section. In defining loan, the court held:

In this situation we believe the important word "loan" must not be loosely construed to include all types of "investment." Instead, the word "loan," as used in Idaho Const., art. IX, § 11 and as extended in scope by the 1968 amendment, must carry the meaning that *there must be a guarantee of full repayment of principal as well as interest. There must be an unconditional promise to repay the principal sum originally lent.* (Emphasis added)

93 Idaho at 223.

The court in *Engelking* also held that the statute authorizing purchases of stock and conversion of convertible bonds violated the express provision of art. VIII, § 2, that the state shall not “directly or indirectly become a stockholder in any association or corporation.”

Thus, the court has established two requirements which must be met by any investment of the Idaho Endowment Fund Investment board. First, the investment must be a “loan,” i.e., there must be an unconditional guarantee of full repayment of principal as well as interest. Second, the board must not directly or indirectly become a stockholder in any association or corporation.

In *Engelking*, supra, the court permitted investment in convertible bonds provided that they were not converted into common stock by the board. Thus, the fact that a security includes a potential for appreciation measured by the increase in value of equity interests is not fatal, provided that the security also unconditionally guarantees the full repayment of principal and interest.

In view of the numerous and varying provisions included in financial instruments offered to investors, it is necessary to determine compliance with Idaho’s constitutional limitations upon endowment investments on a case-by-case basis. This necessarily requires a review of the particular security being considered as defined by the terms of the security agreement and prospectus.

Applying the *Engelking* decision to money market mutual fund investments, we begin with a definition of money market mutual fund drawn from the *Dictionary of Banking and Finance*, John Wiley & Sons, New York, 1982. Therein, “money market fund” is defined in the finance context as:

... [a]n investment vehicle whose primary objective is to make higher-interest securities available to the average investor who wants immediate income and high investment safety. This is accomplished through the purchase of high-yield money market instruments, such as U.S. Government securities, bank certificates of deposit, and commercial paper.

pp. 335-335.

“Mutual fund” is defined as:

... [a]n investment company which ordinarily stands ready to buy back (redeem) its shares at their current net asset value; the value of the shares depends on the market value of the fund’s portfolio securities at the time. Also, mutual funds generally continuously offer new shares to investors.

p. 342.

“Investment company” is defined as including “a company or trust that uses its capital to invest in other companies . . .” p. 288. In the context of Idaho Code § 57-722(3)(b), such a company or trust would be limited to investment in federal obligations.

Thus, a money market mutual fund is an investment company, utilizing a corporation or trust form of organization, which invests in high-yield money market instruments such as U.S. government securities and will redeem its shares at their current net asset value.

The definition of money market mutual fund neither includes nor excludes from the definition funds which do or do not guarantee repayment of principal and interest. It would not be contrary to the definition to provide a guarantee of repayment of principal and some amount of interest over a given period.

As an example, assume that a money market mutual fund invests in federal obligations with an average maturity of 30 days and an average annual interest rate of 8%. Also assume that the fund guarantees full repayment of principal plus interest at a minimum rate of 4% per annum if the security is held for 30 days. The fund further agrees that the investment can be redeemed at the net asset value per share at stated times.

Such an investment would meet the definition of money market mutual fund. It would also meet the definition of "loan" as interpreted by the Idaho Supreme Court in *Engelking*, supra. Such an investment would be comparable to convertible bonds which the court found permissible in *Engelking*. Like convertible bonds, there is an unconditional promise to repay principal and interest if held to a particular date in the future. Like convertible bonds, such an investment would include a right to convert the investment in the event of appreciation above the guaranteed return. In the case of convertible bonds, the court held that conversion to common stock would not be permitted since the state would upon conversion own stock in a corporation in violation of Idaho Const. art. VIII, § 2. This problem is not presented in the above example since upon redemption the state would receive cash rather than stock. Such a money market mutual fund investment would be constitutional.

In view of the ingenuity of the securities industry in developing various investment instruments, the above example is not intended to indicate that only money market mutual funds so structured meet constitutional requirements. Rather, it is intended to point out that money market mutual fund investments are constitutionally permitted vehicles for endowment fund investments if structured so that the state receives an unconditional promise to repay principal and interest.

When a statute is susceptible to a constitutional construction, that construction must be adopted. *Matter of 1979 Valuation of Parcel No. R23487550330*, 104 Idaho 681, 662 P.2d 1125 (1983); *State ex rel. Kidwell v. U.S. Marketing, Inc.*, 102 Idaho 451, 631 P.2d 662 (1981); *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972); *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969). Accordingly, it is our opinion that a court faced with a challenge to Idaho Code § 57-722(3)(b) would read that section to preserve its constitutionality.

The court would construe Idaho Code § 57-722(3)(b) as authorizing investment in money market mutual funds which unconditionally guarantee repayment of principal and interest and which invest in federal obligations.

We have also considered the question whether the form of business organization chosen by an investment company affects the above analysis. As noted earlier, investment companies include both companies and trusts which use their capital to invest in other companies or federal obligations. In practice, money market mutual funds utilize either the corporate or business trust form of organization. Business trusts are also referred to as Massachusetts trusts and common law trusts. It is our opinion that the requirement of an unconditional promise to repay principal and interest must be provided whether the money market mutual fund is organized as a corporation or a Massachusetts or business trust.

There is a great deal of case law describing the nature and attributes of Massachusetts or business trusts (See, e.g., *Modern Status of the Massachusetts or Business Trust*, 88 ALR3d 704.) The ALR annotation discusses the Massachusetts or business trust in substantially more detail than can be covered herein. However, the following points are pertinent to the questions involved in this opinion. Summarizing the cases defining such trusts the annotation states:

From the following illustrative cases which have undertaken to define a Massachusetts or business trust (also known as common-law trust), it may be said that a business trust is an unincorporated business organization created by an instrument by which property is to be held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing the beneficial interests in the trust estate.

In addition to general agreement as to the basic definition of Massachusetts or business trusts, there is also general agreement that such trusts are very different from traditional trusts. For example, in *Morrissey v. Commissioner*, 296 U.S. 344, 56 S.Ct. 289, 80 L.Ed. 263 (1935), the U.S. Supreme Court pointed out that in business trusts the object is not to hold and conserve particular property with incidental powers as in the traditional trust. Rather, the business trust is created to provide a medium for the conduct of business and the sharing of gains.

Similarly, in *Jim Walter Investors v. Empire Madison, Inc.*, 401 F.Supp. 425 (D.C. Ga. 1975), the court noted the following associational characteristics of a real estate investment trust organized under the business trust provisions of Florida law. The associational characteristics found included centralized control, beneficial shares, a distinct legal existence provided by its declaration of trust, limited liability, profit motivation, and the ability of shareholders to remove trustees and to merge, terminate, or amend the trust. The court concluded that the organization displayed no indicia of a traditional trust.

We are aware of no states which treat Massachusetts or business trusts in the same manner as traditional trusts. This apparently results from the associational nature of such organizations and the basic difference in purposes. The associational nature of such organizations has led courts to classify Massachusetts or business trusts as corporations, partnerships, or unincorporated associations. 88 ALR 722-729. States which do not view Massachusetts or business trusts as corporations frequently regulate them as corporations. For example, in *Swartz v. Sher*, 344 Mass. 636, 184 NE2d

51 (1962), it was held that, although a Massachusetts trust with transferable shares was not a corporation or an entity apart from the trustees, the trust was subject to regulation as a corporation and, as a practical matter, business trusts closely resemble corporations.

The cases also hold that the indenture or declaration of trust is determinative of the nature of the organization and of the details of its operation. 88 ALR3d 730. This underscores the importance of reviewing the declarations of trust on a case-by-case basis in determining the nature of a trust in a particular case. For example, in *Koenig v. Johnson*, 71 Cal.App.2d 739, 163 P.2d 746 (1945), it was held that the declaration of trust is to be looked to in determining whether the organization thereby created is an ordinary trust or a business trust.

Similarly, once it is determined that a money market mutual fund is a business trust rather than an ordinary trust, the question whether the securities it offers carry an unconditional promise to repay principal and interest should be determined with reference to the specific terms of the actual offering which are included in the offering's prospectus.

In Idaho, there have been three Supreme Court cases which have considered business trusts. *Spotswood v. Morris*, 12 Idaho 360, 85 P. 1094 (1906); *State v. Cosgrove*, 36 Idaho 278, 210 P. 393 (1922); *Edwards v. Belknap*, 66 Idaho 639, 166 P. 2d 451 (1946).

Spotswood, supra, was an action to recover commissions for procuring a purchase for an alleged sale of real estate. The property involved had been conveyed in trust for a business association or syndicate called the Denver Townsite Company. One of the issues raised was whether two of the members of the business association or syndicate could bind the syndicate other than as set forth in the articles of agreement.

After reviewing the agreement, the court concluded that the association was a form of partnership unlike a normal partnership. In its opinion, the court reproduced virtually the entire agreement which reflects the importance of reviewing the actual agreements involved in determining the nature of such organizations and the legal effects resulting therefrom.

In *Cosgrove*, supra, the court considered the question whether a business trust of the state of Montana which sold one unit of its capital stock in Idaho was subject to Idaho's Blue Sky Law. The court determined that the business trust was an "association" and was, therefore, subject to the Blue Sky Law.

In *Edwards*, supra, the court considered whether grantors of a quitclaim deed to a business trust were entitled to cancellation of the deed as a result of the failure of the business trust to file articles of incorporation or to comply with reporting requirements upon corporations. The case was decided on grounds of estoppel rather than the nature of the organization. As to the nature of business trusts, the decision is somewhat confusing. Only Justice Budge stated that the trust is not technically an association or legal entity. Justices Givens and Keolsch found that the business trust was an unincorporated association which is a legal entity. Justices Holden and Miller

(Dissenting) argued that since the trust exercised powers and privileges of corporations, it was required to file articles of incorporation and conduct its affairs in Idaho as a corporation.

The Idaho cases make it clear that the nature and legal effect of such trusts must be determined with reference to the particular agreements involved. It is also clear from the Idaho cases that a business trust will be treated in Idaho as a form of business organization and not as a traditional trust. This is consistent with the normal view of business trusts as discussed in the ALR annotation cited previously.

The distinction bears emphasizing. Traditional trusts are not viewed as legal entities. Consequently, investment in a federal security by a traditional trustee of endowment funds would be viewed as a direct investment of the endowment fund in federal securities. However, a business trust is viewed by Idaho and virtually all other states as a business entity. As such, Idaho would follow the general rule that certificate holders in a conventional business trust stand in relation to the trust much as do stockholders to a corporation in that they are not creditors of the trust but are rather equitable owners of proportional interests in trust assets and liabilities. 88 ALR3d 737-739; *Selected Investment Corp. v. Duncan*, 260 F.2d 918 (Ca. 10 Okl. 1958), cert.den. 359 U.S. 914, 79 S.Ct. 584, 3 L.Ed. 2d 576.

The same rule has even been found in Massachusetts, one of the jurisdictions following the minority view that business trusts are not legal entities. In *Kennedy v. Hodges*, 215 Mass. 112, 102 N.E. 432 (1913), it was held:

... [t]he shares in the Western Real Estate Trust, come within the same rule. The trustees are resident in this commonwealth and their home business office is here, where only can the certificates be transferred upon surrender and new certificates issued. The certificate holder is at least the owner of an undivided equitable interest in the property held by the trustees. There is on principle in this respect no distinction between such certificate and a certificate for shares of stock in a domestic corporation. This is virtually decided by *Kinney v. Treasurer and Receiver Gen.*, 207 Mass. 368, 371, 93 N.E. 586, 35 L.R.A. (N.S.) 784, Ann.Cas. 1912A, 902; *Peabody v. Stevens*, 102 N.E. 435.

In summary, the form of business organization chosen by a money market mutual fund will not affect the application of Idaho's constitutional provisions regarding investment of endowment funds. Idaho, as most other states, will look to the substance rather than form of business organization to determine the essential nature thereof. If organized as a business trust, an organization will be treated as a business organization and not as a normal trust. This determination will be made by reviewing the declaration of trust to determine the essence of the arrangement. Rights and obligations of shareholders and the trust will be determined from the agreements and documents defining those rights and obligations, including the declaration of trust and prospectus. To satisfy Idaho's constitutional requirements for endowment investments, such documents must unconditionally guarantee repayment of principal and interest upon the endowment investments.

Question 2

The second question posed concerns the authority of the state treasurer to question investments made by the board or to refuse to open accounts or transfer funds for investments chosen by the board.

The Idaho Supreme Court considered the responsibilities of the treasurer and the legislature as to the public school fund in *Moon v. Investment Board*, 96 Idaho 140, 525 P.2d 335 II (1974), and its conclusions therein were reaffirmed in *Moon v. Investment Board*, 97 Idaho 595, 548 P.2d 861 (1976). In interpreting Idaho Const. art. IX, § 3, in the initial case, the court reviewed the reported debate at the Idaho Constitutional Convention and held:

Such language indicates that the Constitutional Convention intended that the legislative branch of the government should have control over the investment of the school endowment fund. . . . This does not conflict with the provision that the state treasurer should be the custodian of the fund, but bifurcates the responsibilities between the executive and legislative branches of government. The treasurer is the custodian of the fund² and the legislature directs by law how the fund shall be invested, which, in this case, was accomplished by the creation of an investment board.

* * *

Article IX, § 11, as amended, further indicates the constitutional mandate that the legislature is responsible for the investment of permanent endowment funds.

96 Idaho at 144.

The court did not define in detail the bifurcation of responsibilities between the treasurer and the board. However, the court's citation of 72 Am.Jur.2d, States, § 64 in footnote 2 of its discussion lends further insight into its thinking as to the intended division of responsibilities.

The Am.Jur. section cited states in pertinent part:

Generally speaking, the duty of a state treasurer is to keep the moneys of the state and to pay them out only on regular warrants or requisitions for legal claims. He is not a trustee of moneys in the state treasury, but holds them only as the agent of the state. If there is any trust, the state is the trustee, and unless it can be sued the trustee cannot be enjoined. Ordinarily, it is not intended that payments out of the public funds should be made on the judgment of the public treasurer alone or the auditor alone. The auditor examines as to the amounts and the performance of the work, and it would seem that as to the facts his finding is sufficient protection, in the absence of any collusion or notice of fraud to the treasurer. However, the auditor's conclusion as to whether a claim is authorized or provided for by law is not binding on, nor is it a protection to, the treasurer. The state treasurer may refuse to

obey a statute commanding him to indorse [sic] warrants when the constitutional debt limit is reached, although the statute is in other respects in its general provisions constitutional.

With regard to the public school fund, it is a trust fund of the state and the endowment fund investment board is trustee. The treasurer is the custodian of the fund. Generally speaking, principles of trust law would apply to the duties of the custodian and the trustee of the trust. The trustee is responsible for the management of the trust fund. The treasurer is responsible as custodian for the safekeeping of the assets of the trust fund.

The citation points out, in the analogous situation of warrant payments, that it is ordinarily not intended that payments out of public funds should be made on the judgment of the treasurer alone or the auditor alone. As to factual questions such as the amount of a claim or the performance of work, the treasurer is entitled to rely on the auditor absent notice of collusion or fraud involving the claim.

However, as to the question of whether a claim is authorized or provided for by law, the auditor's determination is not binding on the treasurer. The treasurer is to pay out state funds "only on regular warrants or requisitions for legal claims" and is not required to make statutorily authorized payments that would violate constitutional provisions. By analogy, the treasurer's custodial responsibilities should not be so narrowly construed as to eliminate all safeguards for the fund. Neither should the treasurer's custodial responsibilities be so broadly construed as to frustrate the board's control over the investment of the fund. Likewise, the board's authority should be interpreted broadly enough to provide for effective investment of funds but not so broadly as to eliminate the safekeeping responsibilities of the custodian.

The Am.Jur. citation indicates that the treasurer, as custodian of the fund, has some authority to refuse to open accounts or to transfer funds for illegal investments. At a minimum, the treasurer may refuse to permit investments that are clearly unconstitutional. On the other hand, refusal to permit clearly legal investments would frustrate the board's constitutional control over investments. Between these extremes, existing case law does not definitively answer the question of the treasurer's responsibility when faced with a request to open an account the treasurer believes is unauthorized by the constitution.

A procedure along the following lines would appear to provide a reasonable approach to the problem. The treasurer should notify the board of legal questions she has regarding any particular investment. The board should review the questions and notify the treasurer whether the board wishes to proceed with the investment. Such a procedure should resolve most problems, assuming substantial discussion with the legal advisors to the treasurer and the board. In those cases in which there remains a substantial doubt as to the legality of an investment, the parties could submit the question to the attorney general for a formal opinion. Alternatively, the treasurer might wish to seek judicial clarification of the question when she has substantial doubts as to the legality of an investment which the board decides to make.

We would recommend that the treasurer refuse to open an account or transfer funds for an investment only in extreme cases in which it appears clear to her on the basis of legal advice that the investment is unauthorized. This recommendation is made for several reasons. It is clear that the responsibility for the choice of investments is vested in the legislature and the board. Liability for losses upon statutorily unauthorized investments would be the responsibility of the board rather than the treasurer (Attorney General Opinion 79-8). Liability for losses upon authorized investments and presumably upon statutorily authorized but unconstitutional investments would impose a constitutional liability which the legislature would be required to satisfy pursuant to Idaho Const. art. IX, § 3, and Idaho Code § 57-724.

If a procedure such as that recommended above is implemented by the treasurer and the board, we would recommend that the board give the treasurer some advance notice of proposed money market fund investments or other new investments differing significantly from those previously utilized. For example, when the board requests legal advice from its counsel as to the legality of a proposed investment, it could notify the treasurer that the board will be considering the investment. Such notice would facilitate the review process.

The above procedural recommendations are intended only as one possible outline of procedures to advance common interests in safeguarding the fund and in providing for the maintenance of the public schools. The board and the treasurer are in the best position to determine whether other procedures will be more responsive to the needs of the parties or more conducive to improved long-term working relationships.

SUMMARY:

Public school endowment funds may constitutionally be invested in money market mutual funds which invest exclusively in federal obligations, provided the money market mutual fund unconditionally guarantees full repayment of principal and interest and provided the state does not directly or indirectly become a stockholder in any association or corporation. The determination must be made on a case-by-case basis following review of the particular investment agreement and prospectus.

Responsibility for choice of investments is vested in the board and the board is responsible for making investments which are legally permitted. The state treasurer has a custodial responsibility to safeguard fund assets entrusted to her care. This responsibility is broad enough, at a minimum, to refuse to open accounts or transfer funds for clearly illegal investments. As to investments which the treasurer believes are possibly illegal, we would recommend that the transaction be completed and that legal resistance, if any, to a board request for investment be limited to judicial review of the question.

Finally, we recommend that the board and the treasurer jointly develop procedures designed to promote the ability of both the board and the treasurer to effectively carry out their responsibilities.

AUTHORITIES CONSIDERED:

Idaho Constitution art. VIII, § 2

Idaho Constitution art. IX, § 3

Idaho Constitution art. IX, §11

Idaho Code § 57-724

§§ 9(6) and 9(8) of S. B. 1277 (S. L., 1969)

72 Am.Jur.2d, States, § 64

Modern Status of the Massachusetts or Business Trust, 88 ALR3d 704

Dictionary of Banking and Finance, John Wiley & Sons, New York, 1982

Attorney General Opinion No. 79-8

Edwards v. Belknap, 66 Idaho 639, 166 P.2d 451 (1946)

Engelking v. Investment Board, 93 Idaho 217, 458 P.2d 213 (1969)

Jim Walter Investors, v. Empire Madison, Inc., 401 F.Supp. 425 (D.C. Ga. 1975)

Kennedy v. Hodges, 215 Mass. 112, 102 N.E. 432 (1913)

Kinney v. Treasurer and Receiver Gen., 207 Mass. 368, 93 N.E. 586 (1912)

Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969)

Matter of 1979 Valuation of Parcel No. R23487550330, 104 Idaho 681, 662 P.2d 1125 (1983)

Moon v. Investment Board, 96 Idaho 140, 525 P.2d 335(1974)

Moon v. Investment Board, 97 Idaho 595, 548 P.2d 861 (1976)

Morrissey v. Commissioner, 296 U.S. 344, 56 S.Ct. 289, 80 L.Ed. 263 (1935)

Nelson v. Marshall, 94 Idaho 726, 497 P.2d 47 (1972)

Selected Investment Corp. v. Duncan, 260 F.2d 918 (Ca. 10 Okla. 1958), cert.den. 359 U.S. 914, 79 S.Ct. 584, 3 L.Ed.2d 576

Spotswood v. Morris, 12 Idaho 360, 85 P. 1094 (1906)

State v. Cosgrove, 36 Idaho 278, 210 P. 393 (1922)

State ex rel. Kidwell v. U.S. Marketing, Inc., 102 Idaho 451, 631 P.2d 662 (1981)

DATED this 20th day of June, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

JOHN J. McMAHON
Chief Deputy Attorney General

DAVID G. HIGH
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

cc: Idaho Supreme Court
Supreme Court Library
Idaho State Library

ATTORNEY GENERAL OPINION NO. 85-5

TO: Rose Bowman, Director
Department of Health and Welfare
Statehouse Mail

Per Request for Attorney General's Opinion.

QUESTION PRESENTED:

Is the Governor of Idaho permitted to appoint a member of the judiciary to the Children's Trust Account Board?

CONCLUSION:

No. An appointment of a member of the judiciary to the Children's Trust Account Board would violate the separation of powers clause, article 2, section 1 of the Idaho Constitution.

ANALYSIS:

Your letter asks if it is permissible for the governor to appoint a sitting judge to serve on the Children's Trust Account Board created by the 1985 legislature, codified at Idaho Code § 39-6001 et seq. The question is primarily one of separation of powers.

Little guidance is provided in that regard by article 5, § 7 of the Idaho Constitution, which states:

No justice of the Supreme Court shall be eligible to any other office of trust or profit under the laws of this state during the term for which he was elected.

This provision of the constitution was adopted without debate at the constitutional convention. Vol. II, p. 1522. The meaning of the provision is, however, clear from the debate of a similar provision which was proposed regarding the governor and other constitutional officers. The sponsors of that proposal — which failed to pass — had argued that such a restriction would serve three purposes: first, it would prevent the governor from using “the patronage of his office and the influence of his position, for the purpose of lifting himself into some other office, generally that of senator of the United States”; second, it would prevent constitutional officers, especially attorneys, from seeking less prestigious but more highly paying offices; finally, it would insure stability and continuity in government because, in the opinion of the sponsors, “when the people elect a man to any office he should undertake to fill that office during the term for which he was elected, and not when he gets into office merely use it for something else.” Proceedings of Constitutional Convention, Vol. I, pp. 426-29.

Article 5, § 7 sheds no light on the question presented in your letter. For one thing, as the Idaho Supreme Court has stated, “this provision is applicable only to justices of the Supreme Court,” not to trial judges. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967). More importantly, the purpose of the provision, even as to supreme court justices, is to prevent a sitting justice from aspiring to another office during his term of office — not to map the terrain dividing strict separation of powers from permissible overlap of powers.

Instead, the answer to the question posed in your letter must be found in article 2, section 1, of the Idaho Constitution, which states in full:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

The framers of the Idaho Constitution gave very little consideration to the separation of powers provision embodied in article 2, section 1. In fact, during the proceedings of the constitutional convention, there was no article regarding separation of powers in the papers before the convention delegates or in any committee thereof. Judge Beatty offered the section under a suspension of the rules because the committee on revision had discovered that there was:

no article in here such as is provided in nearly all constitutions for the distribution of the powers of the legislative, executive and judiciary; and I have prepared, or rather I have quoted from another constitution, what is the usual provision, . . .

Under suspension of the rules, the article was adopted unanimously.

The source of the separation of powers doctrine at the federal level predates the U.S. Constitution. As narrated by the Iowa Supreme Court in *State v. Barker*, 89 N.W. 204 (1902), the founding fathers:

had in mind "Montesquieu's Dissertation on the Spirit of the Laws," in which he said: "There is no liberty if the power of judgment be not separated from the legislative and executive powers when the legislative and executive powers are united in one body or person." . . . He further said: "Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive, the judge might behave with all the violence of an oppressor."

89 N.W. at 208. The same principles were enunciated during the debate over adoption of the U.S. Constitution in the Federalist Papers. Of particular importance, as noted by the Supreme Court of Michigan, are the following passages from those documents:

"The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47.

"For this reason, that convention which passed the ordinance of government, laid its foundation on the basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time." (quoted from Jefferson on Notes on the State of Virginia). The Federalist No. 78.

Local 170, Transport Workers Union of America v. Gadola, 34 N.W.2d 71, 78 (1948).

The Constitution of the United States does not itself contain any express separation of powers doctrine, "but the federal courts have uniformly held that only judicial functions may be imposed upon the judiciary." *State v. Brill*, 111 N.W. 638, 642 (Minn. 1907). A complete summary of the history of the separation of powers doctrine at the federal level may be found in the *Brill* case.

Against the federal background, several states have adopted an absolutely unyielding approach to questions involving separation of powers. In Oregon, for example, it has been held that a circuit court judge may not accept employment as a part-time teacher for pay at a state-funded college. *In the Matter of The Honorable Loren L. Sawyer, Judge*, 594 P.2d 805 (Or. 1979). The same provision of the Oregon Constitution has been held to prohibit a member of the Oregon Legislature from serving as a teacher in a public school. *Monaghan v. School District No. 1*, 315 P.2d 797 (Or. 1957).

Similarly, in West Virginia, that state's supreme court held that "no question can be raised as to the plain meaning of the separation of powers clause . . . and that its plain language calls not for construction but only for obedience." *State v. Bailey*, 150 S.E.2d 449, 452 (1966).

In Idaho, by contrast, the supreme court has never taken so inflexible an approach:

It is not always possible to draw a sharp line of distinction between legislative, judicial and executive powers or functions, nor does it appear necessary to the purpose of the constitutional separation of powers to do so.

Electors of Big Butte Area v. State Board of Education, 78 Idaho 602, 607, 308 P.2d 225, 228 (1967). In stressing the flexibility of the doctrine of separation of powers, the Idaho Supreme Court was echoing the words of, among others, Chief Justice Cardozo while on the New York Court of Appeals:

The exigencies of government have made it necessary to relax a merely doctrinaire adherence to a principle so flexible and practical, so largely a matter of sensible approximation, as that of the separation of powers.

In re Richardson, 160 N.E. 655, 657 (1928). Similarly, the Supreme Court of Georgia has held that:

"This separation [of powers] is not and from the nature of things can not be total." (citations omitted.) "While the departments of government must be kept separate and distinct, it is impossible to draw a mathematical line by which every action can be exactly classified; and there are some matters which do not inherently and essentially appertain to one department of government rather than another." (citation omitted.)

The separation of powers principle is sufficiently flexible to permit practical arrangements in a complex government, . . .

Greer v. State, 212 S.E.2d 836, 838 (1975).

The flexibility of Idaho's approach in dealing with separation of powers issues is provided for by the constitution itself, which provides an exception: "except as in this constitution expressly directed or permitted." This exception to the separation of powers doctrine has led the Idaho Supreme Court even to allow district court judges to exercise such obviously non-judicial powers as the appointment of drainage district commissioners to drainage districts situated within their judicial districts, when called upon to do so by statute. The court ruled that judges may perform such duties because the appointment clause of the Idaho Constitution (article 6, section 4) is equal with and falls within the exception to the separation of powers clause. *Elliot v. McCrea*, 23 Idaho 524, 130 p. 785 (1913). See also, *Ingard v. Barker*, 27 Idaho 124, 147 p. 292 (1915).

In like manner, the Idaho Supreme Court has been flexible in reading the separation of powers clause itself, which expressly forbids only "the exercise of powers prop-

erly belonging” to another branch of government. Thus, the court has upheld the constitutionality of a statute calling upon district judges to hear petitions by agricultural landholders to detach their lands from a municipality and, upon a finding that certain statutory conditions were met, to enter judgment granting such petitions. The supreme court held that the function of the court in such hearings is purely judicial in nature, not discretionary or policy-making. *Lyon v. City of Payette*, 38 Idaho 705, 224 p. 793 (1924). As such, a court performing such functions was not exercising any power “properly belonging” to the legislative or executive branches of government.

The Idaho Supreme Court’s most recent and most extensive treatment of the separation of powers doctrine is to be found in *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962). That case involved a statute which created a Children’s Commission, staffed initially by four members of the legislature. In addressing a challenge to that statute on the ground that it violated the separation of powers clause of the Idaho Constitution, the supreme court adhered to the same flexible approach that has been traditional throughout the state’s history.

It is the basic powers of sovereignty which must remain separate; not subsidiary activities which include the ascertainment of facts, investigation and consultation, the duty of reporting facts and making recommendations, for the purpose of carrying out those basic powers.

84 Idaho at 100, 369 P.2d 594. The court then conducted a detailed examination of the powers conferred upon the Children’s Commission by statute and determined that these powers were “subsidiary,” not “basic”:

to conduct a study and appraisal, make findings and recommendations relative to certain subject matters involving children, and to report to the Governor in order that he may make appropriate budgetary decisions for submission to the next session of the legislature.

84 Idaho at 101, 369 P.2d at 594.

The principles that guided the court in *Jewett v. Williams* are dispositive of the question posed in your letter. The Children’s Trust Account Board, unlike the Children’s Commission in the *Jewett* case, is not merely “a fact-finding and fact evaluating body, to provide information to the legislature.” 84 Idaho at 101. As constituted by the 1985 Idaho Legislature, Idaho Sess. Laws, ch. 31, p. 59, codified at Idaho Code § 39-6001 et seq., the Children’s Trust Account Board is created within the department of health and welfare “to administer the children’s trust account.” 39-6001. In doing so, the board is empowered to “contract with public or private nonprofit organizations, agencies, schools or with qualified individuals for the establishment of community-based educational and service programs designed to reduce the occurrence of child abuse and neglect.” 39-6002(a). Further, the board is given the power to “develop policies to determine whether programs will receive renewed funding.” 39-6003. In addition, the board is given the power to “adopt rules and regulations pursuant to [the Idaho Administrative Procedure Act] to carry out the provisions of this chapter.” 39-6002(d). The board, finally, is not subservient to the department of health and welfare within which it is situated. Rather, the department is responsible for the man-

agement and accounting of trust account moneys “under the direction of the children’s trust account board.” 39-6008.

In short, it is clear that the Children’s Trust Account Board is not a mere fact-finding arm of the legislature; nor is it a mere advisory board subservient to the department of health and welfare. Rather, it is given powers and duties of an executive nature to “administer and enforce the laws as enacted by the legislature and as interpreted by the courts.” This is the classic definition of executive power. *Quinn v. United States*, 349 U.S. 155, 161 (1954).

It is my conclusion that a member of the judiciary can not serve on the Children’s Trust Account Board without violating the Idaho Constitution’s prohibition against exercising powers that “properly belong” to another branch of government, as that prohibition has been interpreted by the Idaho Supreme Court. It must also be stressed that a judge does not have the privilege, in his individual or private capacity, to assume executive responsibility that cannot be imposed on him by law. “To argue that we may separate a judge as the individual servant of the State from a judge sitting as judicial officer is too suspicious to stand the constitutional test imposed in this State for more than a hundred years.” *Local 170 v. Gadola*, 34 N.W.2d at 78.

The policies underlying the prohibition against sitting judges exercising executive powers were stated by Chief Justice Cardozo. “The policy is to conserve the time of the judges for the performance of their work as judges, and to save them from the entanglements, at times the partisan suspicions, so often the result of other conflicting duties.” *In re Richardson*, 160 N.E. at 661.

My conclusion that a member of the judiciary (or of the legislature) may not accept appointment to an executive board, commission or agency, is in keeping with the opinions of other attorneys general. See the following opinions, available on LEXIS: Office of the Attorney General, State of Utah, 85-12, May 9, 1985 (state judge may not simultaneously serve as a member of the State Board of Regents); Office of the Attorney General, State of California, No. 84-506, August 16, 1984 (member of California judiciary may hold office of county law library trustee, but not that of trustee of the State Library); Office of the Attorney General, State of South Carolina, October 6, 1980 (statute allowing automobile license holder to have implied consent hearing before a magistrate in the county where the licensee was arrested, found unconstitutional as imposing on the judiciary responsibilities which are not judicial in nature and which infringe on the powers of the executive branch of government); Office of the Attorney General, State of Iowa, 78-4-1, April 3, 1978 (proposal to have a district court judge serve as member of the Board of Directors of the Department of Correctional Services within his judicial district, was “a classic violation of the doctrine of separation of powers”).

To the same effect are cases from numerous other jurisdictions. See, for example, *State ex rel. McLeod v. Yonce*, 261 S.E.2d 303 (S.C. 1979) (statute appointing circuit court judge to preside over public utility rate cases held unconstitutional); *Greer v. State*, 212 S.E.2d 836 (Ga. 1975) (members of the Georgia Assembly ineligible to serve on the governing body of the World Congress Center Authority); *Application of Nelson*, 163 N.W.2d 533 (S.D. 1968) (statute requiring circuit judge to be chairman

of South Dakota Electric Mediation Board held unconstitutional as infringing on executive branch despite fact powers of board were quasi-judicial in nature); *State v. Bailey*, 150 S.E.2d 449 (W.Va. 1966) (statute naming leadership of legislature to membership on State Building Commission held unconstitutional); *Local 170 v. Gadola*, 34 N.W.2d 71 (Mich. 1948) (statute requiring circuit judge to sit on compulsory arbitration board handling labor/management disputes for public utilities and hospitals held unconstitutional as an exercise of powers not properly belonging to the judiciary). Finally, despite a tradition dating back many decades and despite allegations that the tradition was "efficient, convenient and useful in facilitating functions of government," the Mississippi Supreme Court recently responded to a suit brought by that state's attorney general and overturned nine different statutes appointing members of the legislature to various boards, commissions and agencies. *Alexander v. State By and Through Allain*, 441 So.2d 1329 (Miss. 1983).

It is a tribute to the wisdom, diligence and integrity of a judge that the governor wishes him to assume responsibilities as a trustee of the Children's Trust Account Board. Nothing in this opinion should be interpreted as casting a cloud on the talents or person of anyone involved in this endeavor. Nonetheless, it is my opinion that a member of the judiciary (or of the legislature) may not serve on any board, commission or agency that exercises powers of the executive branch of government. To do so would violate the separation of powers clause, article 2, section 1, of the Idaho Constitution.

DATED this 21st day of October, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

JOHN J. McMAHON
Chief Deputy Attorney General

AUTHORITIES CONSIDERED:

1. Constitutions:
Idaho Constitution art. 2, section 1.
Idaho Constitution art. 5, section 7.
2. Statutes:
Idaho Code § 39-6001 et seq.
3. Idaho Cases:
Electors of Big Butte Area v. State Board of Education, 78 Idaho 602, 308 P.2d 225 (1967).

Jordan v. Pearce, 91 Idaho 687, 429 P.2d 419 (1967).

Elliot v. McCrea, 23 Idaho 524, 130 P. 785 (1913).

Ingard v. Barker, 27 Idaho 124, 147 P. 292 (1915).

Lyon v. City of Payette, 38 Idaho 705, 224 P. 793 (1924).

Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

4. Cases Cited from Other Jurisdictions:

Quinn v. United States, 349 U.S. 155 (1954).

State v. Barker, 89 N.W. 204 (Iowa 1902).

Local 170, Transport Workers Union of America v. Gadola, 34 N.W.2d 71 (Mich. 1948).

State v. Brill, 111 N.W. 638 (Minn. 1907).

In the Matter of The Honorable Loren L. Sawyer, Judge, 594 P.2d 804 (Or. 1979).

Monaghan v. School District No. 1, 315 P.2d 797 (Or. 1957).

State v. Bailey, 150 S.E.2d 449 (W.Va. 1966).

In re Richardson, 160 N.E. 655 (N.Y. 1928).

Greer v. State, 212 S.E.2d 836 (Ga. 1975).

State ex rel. McLeod v. Yonce, 261 S.E.2d 303 (S.C. 1979).

Application of Nelson, 163 N.W.2d 533 (S.D. 1968).

Alexander v. State By and Through Allain, 441 So.2d 1329 (Miss. 1983).

ATTORNEY GENERAL OPINION NO. 85-6

TO: Mr. Tom D. McEldowney, Director
State Department of Finance
STATEHOUSE MAIL

Per Request for Attorney General's Opinion.

QUESTIONS PRESENTED:

1. We have records for two banks which were liquidated by the FDIC in 1955 and whose records were returned to us by FDIC. We also have records for a bank closed in

1923 as well as files containing charters, articles of incorporation, and other documents for institutions that were closed, bought-out or converted to federal charters. We would like to get rid of these records. Are these records subject only to Idaho Code § 67-5751, and the regulations of Central Records Management or are we required to retain these records indefinitely?

2. In connection with the closure of a savings and loan association, the Director was ordered by the Fifth District Court in 1970 to destroy ledgers and other records of the association in 1975. The Department failed to destroy the records at that time. Should the records be destroyed now pursuant to the court order or must destruction be pursuant to rules of the Department of Administration?

3. In connection with this same closure in 1970, the court ordered unclaimed funds to be transferred to the State Treasurer pursuant to Idaho Code § 26-919, now superseded. This transfer was made. The Auditor said that this money must now be sent to the Tax Commission under the Unclaimed Property Law (ch. 5, title 14). Must that money be transferred to the Tax Commission? If so, is it the responsibility of this Department or the Treasurer to make that transfer? If so, is the transfer to be made under the current or prior Unclaimed Property Law?

4. What is the relationship between the Unclaimed Property Law and liquidation procedures in the Bank Act (ch. 10, title 26)? Is the Bank Act procedure superseded by the Unclaimed Property Law? To what extent does the new Unclaimed Property Law supersede the time limits of the prior Unclaimed Property Law?

CONCLUSION:

1. With the exception of records ordered destroyed by court order, bank records which the Department of Finance no longer needs may be destroyed or transferred to the State Historical Society pursuant to the procedures provided by Idaho Code §§ 67-5751 through 67-5753.

2. Records previously ordered destroyed by court order should be destroyed pursuant to that order.

3. The Unclaimed Property Act applies to unclaimed funds transferred to the State Treasurer. The responsibility for compliance is on the holder of the funds, which is the State Treasurer in this instance. The current Unclaimed Property Act governs the procedure to be followed.

4. The Bank Act is in effect and governs treatment of unclaimed funds during liquidation. Upon completion of liquidation and transfer of unclaimed property to the State Treasurer pursuant to the Bank Act, the State Treasurer should file an unclaimed property report and transfer funds to the unclaimed property account as provided in the Unclaimed Property Act.

ANALYSIS:

Question No. 1

The bank records described in question 1 may be destroyed pursuant to the provisions of Idaho Code §§67-5751 through 67-5753. These statutes empower the Director of the Department of Administration to provide rules and procedures for the retention of state records and the destruction of state records. Idaho Code § 67-5751 defines state records as:

Any document, book, paper . . . or other material regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of official state business.

It appears from the question presented that the records were received pursuant to law and in connection with the transaction of official state business. Therefore, the general provisions of Idaho Code § 67-5751 apply unless statutes specifically relating to bank records provide a different result.

Our research discloses no such specific banking statutes which govern destruction or retention of bank records by the Department of Finance. Therefore, the general statutes, Idaho Code §§ 67-5751 through 67-5753 apply.

Question No. 2

The records previously ordered destroyed by the district court should be destroyed pursuant to the court's order. Idaho Code §§ 67-5751 through 67-5753 discussed above, which govern destruction of records, were adopted in 1974 and 1975. Prior to this time there were no laws governing retention or destruction of general records held by state agencies. Accordingly, prior to adopting the records destruction statutes, control, retention and destruction of bank records would have been left to the discretion of the Department of Finance after consideration of administrative, regulatory and public needs.

However, in this instance, the matter was submitted to the district court and the resulting orders of the court must be obeyed. The State Constitution vests judicial power in the courts. Idaho Constitution, art. 5. The judicial power includes the power to finally determine controversies and provide an adequate remedy. See, e.g., *Election of Big Butte Area v. St. Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

When the Director of the Department submitted the closure of the savings and loan to a court, he became subject to the orders of the court in that matter. *Id.* As the court ordered destruction of the records, they should be destroyed — regardless of the fact that destruction is now some 10 years later than ordered.

Question No. 3

The third question addresses the status of unclaimed funds transferred to the State Treasurer after liquidation of a savings and loan association. The transferred funds are unquestionably unclaimed property. Idaho's Unclaimed Property Act is found at Idaho Code §§ 14-501 et seq. Idaho Code § 14-502 is the basic statute in Idaho's Unclaimed Property Act. That section provides in pertinent part:

Property presumed abandoned — General rule. — (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of a holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned.

Idaho Code § 14-511 makes the Unclaimed Property Act applicable to properties distributable in liquidation of business associations. That statute provides:

Property of business associations held in course of dissolution. — Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned.

Idaho Code § 14-513 makes the Unclaimed Property Act applicable to government agencies, including the State Treasurer, providing:

Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than one year after becoming payable or distributable is presumed abandoned.

The burden of compliance with Idaho's Unclaimed Property Law falls on the holder of the property in question pursuant to Idaho Code § 14-517. "Holder" is defined in Idaho Code § 14-501 as the person in possession of the unclaimed property. The burden of compliance with the Unclaimed Property Law in this case then is on the State Treasurer. Pursuant to Idaho Code § 14-538, the current Unclaimed Property Law is the proper law of application to this problem. However, the prior law's enforcement and penalty provisions are specifically preserved.

Question No. 4

The fourth question requests clarification of the relation between the Bank Act, Idaho Code § 26-1001 et seq., and the Unclaimed Property Act, Idaho Code 14-501 et seq. The two Acts do not appear to conflict as to property which is reportable by the bank to the Unclaimed Property Administrator. The Idaho Unclaimed Property Administrator ["Administrator"] becomes a creditor of the bank and succeeds to the priority and status of the true owners of the unclaimed funds. In Epstein, McThenia & Forslund, *Unclaimed Prop. L. and Rept. Forms*, § 3.02, pp. 3-5 (Matthew Bender 1984), there is a discussion of this issue as follows:

The right of the states to escheat or take custody of unclaimed property is generally considered to be derivative. In other words, the state takes the interest of the unknown or absentee owner.

Thus, the Administrator should be notified of bank insolvency pursuant to Idaho Code § 26-1016. The Administrator's claims for such unclaimed property should be treated as all other claims under Idaho Code §§ 26-1017 et seq.

We read Idaho Code § 26-1023 (which deals with distribution of unclaimed property after the liquidation is completed) as being consistent with Idaho's Unclaimed Property Act. There is no express conflict between the statutes. A transfer of the unclaimed property should be made to the State Treasurer pursuant to Idaho Code § 26-1023. The Treasurer then has a duty to comply with the Unclaimed Property Act. The State Treasurer should report the unclaimed property to the Administrator. This report should be made pursuant to Idaho Code § 14-517 in the report due next after the one-year holding period specified in Idaho Code § 14-513 has run. The Treasurer has six months after filing the report to transfer physical possession of the unclaimed property to the Administrator pursuant to Idaho Code § 14-519.

AUTHORITIES CONSIDERED:

Idaho Constitution art. 4, §2

Idaho Code §§ 14-501, 14-502, 14-511, 14-513, 14-517, 14-519, 14-538 (Unclaimed Property Act, ch. 5, title 14)

Idaho Code § 26-919

Idaho Code §§ 26-1001, 26-1016, 26-1017, 26-1023 (Bank Act, ch. 10, title 26)

Idaho Code §§ 67-5751 through 67-5753

Epstein, McThenia & Forslund, *Unclaimed Prop. L. and Rept. Forms*, § 3.02, pp. 3-5 (Matthew Bender 1984)

DATED this 19th day of November, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

C. A. DAW
Deputy Attorney General

STEVE PARRY
Deputy Attorney General

WAYNE KLEIN
Deputy Attorney General

cc: Idaho Supreme Court
Supreme Court Library
Idaho State Library

ATTORNEY GENERAL OPINION NO. 85-7

TO: Mr. Gary H. Gould
Director, Department of
Labor and Industrial Services

STATEHOUSE MAIL

Per Request for Attorney General's Opinion.

QUESTION PRESENTED:

Are dedicated fund divisions of the Department of Labor and Industrial Services required to go through the budgeting and appropriation procedures set out in title 67, ch. 35, Idaho Code, before expending the fund in the respective division's dedicated fund accounts? This question is posed because the provisions in the Idaho Code relative to those accounts (§§ 39-4124, 54-1015, and 54-2630) do contain language which suggests that the funds in these accounts may be perpetually appropriated to the Department.

CONCLUSION:

The dedicated fund divisions of the Department of Labor and Industrial Services are required to go through the budgeting and appropriation procedures of ch. 35, title 67, Idaho Code, before expending the dedicated funds.

ANALYSIS:

The Department of Labor and Industrial Services is funded from the general account, interaccount billings, the mine safety training grant account, and three dedicated accounts. Chapter 90, 1985 Sess. L. The three dedicated accounts include the electrical board account, the plumbing board account and the Idaho building code account. Each of these dedicated accounts receives funds from various fees that the Department charges.

The statutes creating the three dedicated accounts provide for continuing appropriations to the Department from those accounts. For example, Idaho Code § 54-2630, which creates the Idaho plumbing board account, provides in pertinent part:

All such moneys, hereafter placed in said account, are hereby set aside and perpetually appropriated to the department of labor and industrial services to carry into effect the provisions of this act.

Idaho Code §§ 39-4124 and 54-1015 create the Idaho building code fund and the electrical board account. Those code sections also contain continuing appropriation language nearly identical to the continuing appropriation language of Idaho Code § 54-2630 quoted above.

If the three continuing appropriation statutes were not modified by other statutory

provisions, they would provide sufficient authority for the Department to spend funds of those accounts without the need for an annual appropriation bill. For example, in *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931), the Idaho Supreme Court considered a similar continuing appropriation from the Adjutant General's contingent fund. The Court held that there is no constitutional inhibition against such continuing appropriation, provided the continuing appropriation is limited to amounts in a special fund of the state.

Thus, if there were no other statutes providing for annual budgeting and appropriation of funds that have been continually appropriated, there would be no necessity to go through the annual budgeting and appropriation procedures. However, as discussed below, ch. 35, title 67, Idaho Code, requires annual budgeting and appropriation of continually appropriated funds.

Several sections of ch. 35, title 67, Idaho Code, require agencies receiving continuing appropriations to comply with the annual budgeting and appropriation process. Idaho Code § 67-3503 provides in pertinent part:

Each department, office and institution . . . shall, not later than the 15th day of August . . . prepare and file in the office of the administrator of the division [of financial management] . . . its report of receipts from all sources, including appropriations made by the legislature, its expenditures of all sums received from all sources, segregated as provided for in the blanks, and its estimates of receipts and expenditures for the current and succeeding fiscal years. [Emphasis added]

Following receipt of the foregoing information, the administrator of the division of financial management submits to the governor and the Joint Finance/Appropriation Committee information for the budget, pursuant to Idaho Code § 67-3505.

The governor is then required to submit the executive budget to the legislature. Pursuant to Idaho Code § 67-3507 the executive budget must include detailed information as to the needs of the various departments for the next fiscal year, and provides:

All funds, including federal and local funds and interaccount receipts received for any purpose, shall be accounted for in the budget. [Emphasis added]

The foregoing sections reflect a legislative intention to deal with *all* sources of funding as part of the annual appropriation process.

Idaho Code § 67-3514 deals with the responsibility of the Joint Finance/Appropriation Committee in preparation of appropriation bills and deals specifically with continuing appropriations. That section provides in pertinent part:

[p]roviding further, that for any department, office, or institution operating in part or in whole under a continuing appropriation or fund authorized by the legislature, the joint committees of the legislature having jurisdiction of

appropriations shall, after examining the budget, prepare and introduce appropriation bills covering all the requirements of the respective departments, offices, and institutions of the state operating under each such continuing appropriation.

Thus, the Joint Finance/Appropriation Committee is required to prepare an appropriation bill covering all the requirements of departments, such as the Department of Labor and Industrial Services, which operate in part under a continuing appropriation or fund authorized by the legislature.

Finally, Idaho Code § 67-3516 provides in pertinent part:

Appropriation acts when passed by the legislature of the state of Idaho, and allotments made thereunder, *whether the appropriation is fixed or continuing*, are fixed budgets beyond which state officers, departments, bureaus and institutions may not expend. [Emphasis added]

The foregoing statutes clearly require departments such as the Department of Labor and Industrial Services to follow the annual budgeting and appropriation process of ch. 35, title 67, Idaho Code, and to limit fiscal year expenditures to the amount appropriated by the annual appropriation bill. The effect of the legislature's creation of the three dedicated accounts for the department is to set aside and dedicate certain revenues for the exclusive use of the department. However, the amount of such revenue that can be expended in any fiscal year is controlled by the legislature through the annual appropriation process.

We note that certain continuing appropriations, such as those regarding endowment funds or endowment income funds are exempted from the provisions of ch. 35, title 67 (Idaho Code § 67-3530). However, there is no comparable exception applicable to the dedicated funds of the Department of Labor and Industrial Services.

AUTHORITIES CONSIDERED:

Idaho Code § 39-4124

Idaho Code § 54-1015

Idaho Code § 54-2630

Idaho Code § 67-3503

Idaho Code § 67-3505

Idaho Code § 67-3507

Idaho Code § 67-3514

Idaho Code § 67-3516

Idaho Code § 67-3530

McConnel v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931)

DATED this 31st day of December, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

DAVID G. HIGH
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

cc: Idaho Supreme Court
Supreme Court Library
Idaho State Library

ATTORNEY GENERAL OPINION NO. 85-8

TO: The Honorable John V. Evans
Governor
State of Idaho
Statehouse
Boise, Idaho 83720

Per Request for Attorney General's Opinion.

QUESTION PRESENTED:

Your letter of December 30, 1985 requests our opinion as to whether "motor vehicles owned by Idaho cities, counties, and other political subdivisions of the State [are] subject to the mandatory automobile liability insurance laws" found in Idaho Code §§ 49-232 to -235.

CONCLUSION:

Our opinion is that cities, counties and other political subdivisions of the State of Idaho are not subject to the automobile insurance liability laws.

ANALYSIS:

Your letter notes that there is some confusion in the area of automobile liability insurance coverage because of the conflicting signals provided by Idaho Code section 49-233, on the one hand, and section 49-1533 on the other. Idaho Code § 49-233

Idaho Code § 67-3530

McConnel v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931)

DATED this 31st day of December, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

DAVID G. HIGH
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

cc: Idaho Supreme Court
Supreme Court Library
Idaho State Library

ATTORNEY GENERAL OPINION NO. 85-8

TO: The Honorable John V. Evans
Governor
State of Idaho
Statehouse
Boise, Idaho 83720

Per Request for Attorney General's Opinion.

QUESTION PRESENTED:

Your letter of December 30, 1985 requests our opinion as to whether "motor vehicles owned by Idaho cities, counties, and other political subdivisions of the State [are] subject to the mandatory automobile liability insurance laws" found in Idaho Code §§ 49-232 to -235.

CONCLUSION:

Our opinion is that cities, counties and other political subdivisions of the State of Idaho are not subject to the automobile insurance liability laws.

ANALYSIS:

Your letter notes that there is some confusion in the area of automobile liability insurance coverage because of the conflicting signals provided by Idaho Code section 49-233, on the one hand, and section 49-1533 on the other. Idaho Code § 49-233

seems to provide that a motor vehicle owner must either (a) carry liability insurance, or (b) post an indemnity bond. This section of the Code is entitled "Required motor vehicle insurance" and it appears to apply to every motor vehicle owner without exception.

On the other hand, as your letter notes, the liability insurance coverage of § 49-233 must be "in an amount not less than that required by section 49-1521, Idaho Code . . ." But section 49-1533 expressly exempts motor vehicles owned by state and local governments from the liability insurance requirements of section 49-1521: "This act shall not apply with respect to any motor vehicle owned by the United States, this state or any political subdivision of this state or any municipality therein." Thus, we are forced to address the question of whether state and local governments are subject to the "Required motor vehicle insurance" provisions of section 49-233 or the broad "Exceptions" set forth in section 49-1533.

It is our opinion that the Idaho Legislature intended that state and local governmental entities be exempt from Idaho's motor vehicle insurance laws. First, it is important to read statutes so as not to reach absurd results. As your letter notes, it would make no sense to require units of government to carry automobile liability insurance under section 49-233 if "the amount of the insurance coverage they are required to maintain can only be determined by reference to a section of the Code from which they are exempt." In short, the statute requiring insurance is rendered a nullity if the amount of insurance required is zero.

Second, there are sound policy reasons why compulsory automobile liability insurance provisions should not apply to governmental units. The purpose of compulsory automobile insurance has been succinctly stated by the Idaho Court of Appeals:

A legislative requirement that motorists carry liability insurance falls within the social and economic domain reserved for the deferential standard of review. It is not only reasonably conceivable but manifest that this requirement serves the objective of reducing the economic hardship suffered by persons injured, or whose property is damaged, by financially irresponsible operators of motor vehicles.

State v. Reed, 107 Idaho 162, 167, 686 P.2d 842, 847 (1984). The state and its political subdivisions are not "financially irresponsible operators of motor vehicles" because, as we shall show later in this opinion, the legislature has provided a series of backup measures so that governmental entities will always be held financially responsible when their tortious conduct, or that of their employees, causes personal injury or property damage. That being the case, it is easy to see why the exemption granted to governmental entities from the requirements of the Motor Safety Responsibility Act is intended to apply to all other automobile insurance requirements as well.

Third, as noted by the Idaho Supreme Court in *Porter v. Farmers Insurance Company of Idaho*, 102 Idaho 132, 134, 627 P.2d 311, 313 (1981), the Motor Vehicle Safety Responsibility Act found at Idaho Code §§ 49-1501 to -1540 represents this state's adoption of a uniform act. It is routinely held that:

Under the terms of the financial responsibility or compulsory automobile liability insurance statutes enacted in several jurisdictions the provisions of the law are expressly made inapplicable to any motor vehicle owned (or owned and operated) by the United States, the state government, or any political subdivision of the state, or any municipality therein.

7 Am.Jur.2d “Automobile Insurance” § 33 at 487. It should not be presumed that the Idaho Legislature intended to diverge from this accepted construction of the uniform law.

Finally, we must not read the state’s automobile insurance liability laws in a vacuum. The liability of state and local governmental units for the tortious conduct of their employees is comprehensively treated in the Idaho Tort Claims Act. That Act provides the principles whereby “every governmental entity is subject to liability for money damages arising out of its negligent or otherwise wrongful acts or omissions and those of its employees acting within the course and scope of their employment duties . . .” Idaho Code § 6-903. The Tort Claims Act sets forth the conditions under which governmental units are liable, the corresponding liability of governmental employees, the procedure for filing claims, and the guidelines for such matters as venue, service, attorneys’ fees and damages.

Several provisions of the Tort Claims Act make it clear that local governmental units are not required to carry liability insurance. For one thing, the overall structure of the Act itself is revealing. Throughout the Act, the duties placed upon the state parallel those placed upon political subdivisions of the state. Thus, under Idaho Code § 6-919, “the risk manager in the division of purchasing shall provide a comprehensive liability plan which will cover and protect the state and its employees from claims and civil lawsuits.” The obligation of this comprehensive liability plan may be met *either* by purchasing liability insurance *or* by “use of the retained risk fund provided in section 67-5757.” *Id.*

The provisions for political subdivisions of the state are similar, though of course less grandiose. Under Idaho Code § 6-927, it is anticipated that all political subdivisions of the state shall likewise have a “comprehensive liability plan” in place to cover their liability exposure. Similarly, Idaho Code § 6-923 authorizes, but does not require, political subdivisions to purchase whatever liability insurance is necessary to meet the needs of themselves and their employees. In each instance, the legislature has required that governmental entities have a plan in place to handle exposure to tort liability, but has provided alternative means for meeting that requirement.

Further evidence can be found in Idaho Code § 6-912 for the proposition that liability insurance is but one option in providing coverage for a governmental unit’s liability exposure. That section sets forth the procedure for compromising claims against a governmental political subdivision: “The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, *if any*.” (Emphasis added.)

The final two sections of the Tort Claims Act give additional guidance. Idaho Code

§ 6-927 provides a mechanism whereby local governmental units may raise funds to provide themselves with a comprehensive liability plan:

Notwithstanding any provisions of law to the contrary, all political subdivisions shall have authority to levy an annual property tax in the amount necessary to provide for a comprehensive liability plan *whether by the purchase of insurance or otherwise as herein authorized*, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; . . . (Emphasis added.)

Similarly, Idaho Code § 6-928 provides a mechanism whereby local governmental units may raise funds to pay claims, in the absence of a liability insurance policy:

Notwithstanding any provision of law to the contrary and in the event that there are no funds available, the political subdivision shall levy and collect a property tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act *where the political subdivision has failed to purchase insurance or otherwise provide a comprehensive liability plan* to cover a risk created under the provisions of this act. (Emphasis added.)

In both of these latter situations, the legislature has provided a fail-safe procedure so that tort victims will not go without reimbursement for their personal injuries or property damage. In doing so, the legislature has expressly provided that any tax levy needed to meet these requirements will be exempt from the one percent law or other similar restrictions.

In conclusion, it is fair to say the legislature anticipated, as a general rule, that governmental entities — both state and local — would carry liability insurance. At every turn, however, the legislature stopped short of requiring such insurance and made express provision for governmental units to adopt alternative comprehensive liability plans that allow for liability coverage apart from insurance coverage.

DATED this 31st day of December, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

JOHN J. McMAHON
Chief Deputy Attorney General

AUTHORITIES CONSIDERED:

Statutes:

Idaho Code § 6-903

Idaho Code § 6-912

Idaho Code § 6-919

Idaho Code § 6-923

Idaho Code § 6-927

Idaho Code § 6-928

Idaho Code § 49-232-235

Idaho Code § 49-233

Idaho Code § 49-234

Idaho Code § 49-235

Idaho Code § 49-1501-1540

Idaho Code § 49-1521

Idaho Code § 49-1533

Idaho Code § 67-5757

Idaho Cases:

Porter v. Farmers Insurance Company of Idaho, 102 Idaho 132, 124, 627 P.2d 311, 313, (1981).

State v. Reed, 107 Idaho 162, 167, 686 P.2d 842, 847 (1984).

Other Authorities:

7 Am. Jur. 2d § 33.

ATTORNEY GENERAL OPINION NO. 85-9

TO: Mr. A. I. Murphy
Director
Idaho State Board of Corrections

STATEHOUSE MAIL

Per Request for Attorney General's Opinion.

QUESTIONS PRESENTED:

1. Are the meetings of the Commission of Pardons and Parole subject to the Open Meeting Law, Idaho Code § 67-2341, et seq.?
2. What records are exempt by law from public inspection and may be considered in executive session pursuant to Idaho Code § 67-2345(d)?
3. May a vote of the Commission of Pardons and Parole be taken in private?

CONCLUSION:

1. As a statutory entity with authority to make decisions concerning paroles, pardons and commutations, the Commission of Pardons and Parole is subject to the Open Meeting Law and is required to open all meetings to the public except those conducted in executive session.
2. Only documents which are excluded from public inspection by statute are to be considered in executive session. Idaho Code §§ 67-2342(1) and 67-2345(3).
3. The Commission of Pardons and Parole may not vote in private.

ANALYSIS:

Question No. 1

The Idaho Commission of Pardons and Parole is appointed by the Board of Corrections under a authority of Idaho Code § 20-210. The Commission has the power to establish rules, regulations, policies and procedures under which parole may be granted. Idaho Code § 20-233. A quorum of three commissioners holds regular parole hearings. Idaho Code § 20-210.

The Commission also has the authority to grant commutations and pardons. Idaho Code § 20-210, Idaho Const., art. 4, § 7. The Commission meets at least four times a year to consider applications for pardon and commutation of sentence. Idaho Code § 20-213.

Under the Idaho Open Meeting Law, governing bodies of public agencies created by statute, as well as those created by the Idaho Constitution, are required to open their meetings to the public. Idaho Code § 67-2341(3)(a); Idaho Att’y Gen. Op. No. 77-30 (1977). “Governing body” is defined as “the members of any public agency which consists of two or more members with the authority to make decisions for or recommendations to a public agency regarding any matter.” Idaho Code § 67-2341(4). “Public agency” includes any state board or commission. Idaho Code § 67-2341(3)(a). Thus, the Commission of Pardons and Parole, a statutorily created public agency, having both statutory and constitutional powers to make decisions concerning paroles, pardons and commutations, is subject to the provisions of the Open Meeting Law. All of the Commission’s meetings, except those conducted in an executive session, must be open to the public. Similar conclusions have been reached in other states. *See*, Missouri Att’y Gen. Op. No. 32-83 (1983) (Board of Pardons and Parole subject to Missouri’s Open Meeting Law); and *Sanders v. Benton*, 579 P.2d

815 (Okla. 1978) (Board of Corrections, by reason of its statutory origin, comes within the purview of the Oklahoma Open Meeting Law).

Furthermore, "meeting" is defined in Idaho Code § 67-2341(5) as "the convening of a governing body of a public agency to make a decision *or to deliberate towards a decision* on any matter" (emphasis added). Therefore, deliberations by the Commission must be conducted publicly. *See*, Idaho Att'y Gen. Op. No. 77-13 (1977).

It could be argued that as to the deliberative processes by which the Commission arrives at its decisions, its function is judicial or quasi-judicial, and as to that phase of its activities, the Open Meeting Law should not apply under Idaho Code § 67-2341(1)(a) which excludes "court and their agencies and divisions, and the judicial council, and the district magistrates commission." Such an argument fails, for the reasons that follow.

In Idaho, quasi-judicial functions have been defined as those acts which entail the application of "general rules or policies to specific individuals, interests, or situations," *Cooper v. Board of County Commissioners of Ada Co.*, 101 Idaho 407, 410, 614 P.2d 947, 950 (1980), and those acts involving "investigation, judgment and discretion," *Raaf v. State Board of Medical Examiners*, 11 Idaho 707, 717 (1906), (quoting, *People v. Dental Examiners*, 110 Ill. 180). When these definitions are applied to the Commission of Pardons and Parole, many of the Commission's functions are quasi-judicial: The Commission conducts hearings, considers evidence, makes a determination affecting only a specific individual, and comes to a decision in much the same manner as a court of law. (*See*, Missouri Att'y Gen. Op. No. 32-83 (1983), which states that the Missouri Board of Probation and Parole has rulemaking and quasi-judicial powers.)

Unlike Idaho, the statutes of several states address the issue of whether their Open Meeting Laws apply to quasi-judicial functions, and/or boards of pardons and parole. Such statutes may be grouped into the following three categories:

(1) *By specifically excluding quasi-judicial bodies from the scope of the Open Meeting Law.* (*See*, Ky.Rev.Stat.Ann. §§ 61.805(2) (Supp. 1984); Wash.Rev.C.Ann. § 42.30.140(2) (Supp. 1986); N.Y.Pub.Off.L. § 108 (Supp. 1985), *or by permitting such bodies to deliberate in private*, (*See*, Alaska St. § 44.62.310(d)(1) (Supp. 1984); Wis.Stat.Ann. § 19.85(1)(a) (Supp. 1985); Kans.Stat.Ann. § 75-4318(a) (1985);

(2) *By specifically including quasi-judicial bodies within the scope of the Open Meeting Law*, (*See*, Tex.Rev.Civ.Stat.Ann., art. 6252-17(c) (Supp. 1985); Ariz.Rev.Stat.Ann. § 38-431(6) (1985); Mo.Ann.Sta. § 610.010(2) (Supp. 1984); or

(3) *By specifically excluding parole and/or pardon boards from the scope of the Open Meeting Law*, (*See*, N.J.Stat.Ann. § 10:4-8(a) (Supp. 1985); Ohio Rev.C.Ann. § 121.22(D) (1984); Alaska Stat. § 44.62.310(d)(3) (Supp. 1984).

However, Idaho's Open Meeting Law, like the open meeting laws of many other states, does not specifically address quasi-judicial functions or quasi-judicial bodies.

In a few of these states like Idaho, courts have been asked to determine whether quasi-judicial functions come within the Open Meeting Law.

The leading case on this issue is *Canney v. Board of Public Instruction of Alachua Co.*, 278 So.2d 260 (Fla. 1973). In *Canney*, the Florida Supreme Court held that the quasi-judicial proceedings of a school board were not excluded from Florida's open meeting law:

Once the legislature transforms a portion of a board's responsibilities and duties into that of a judicial character so that the board may exercise quasi-judicial functions, the prerogatives of the legislature in the matter do not cease. . . . If the legislature may delegate these quasi-judicial powers to the School Board and regulate the procedure to be followed in hearings before the board, it follows as a matter of common logic that the legislature may further require all meetings of the board at which official acts are to be taken to be public meetings open to the public. *Id.* at 263.

The reasoning of *Canney v. Board of Public Instruction* has been followed in court opinions from other states (*See, City of Harrisburg v. Pickles*, 492 A.2d 90, 96 (Pa. 1985); *Citizen Action Coalition of Indiana, Inc., v. Public Service Commission of Indiana*, 425 N.E.2d 178 (Ind. 1981); Ill.Att'y Gen.Op. 83-004 (1983)), and is harmonious with the statutory and constitutional provisions of Idaho. Of special significance is Idaho's constitutional provision that, "the legislature shall by law prescribe the sessions of said board [i.e., Board of Pardons] and the manner in which application shall be made, and regulate proceedings thereon." Article 4, § 7, Idaho Constitution. Until the Idaho legislature provides to the contrary, this public agency is bound by the Open Meeting Law like all other public agencies. To hold otherwise would be to ignore the express words of the statute, "[a]ll meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act." Idaho Code § 67-2342(1). Where a statute is neither ambiguous nor uncertain, the clearly expressed intent of the legislature must be given effect and there is no occasion for interpretive construction. *Swensen v. Buildings, Inc.*, 93 Idaho 466, 468, 463P.2d 932, 934 (1970).

Furthermore, failure to conduct its business pursuant to the Open Meeting Law may be a source of great and untoward mischief: "Any action taken at any meeting which fails to comply with the provisions of [this law] shall be null and void." Idaho Code § 67-2347.

Therefore, it is our opinion that, except for those meetings properly conducted in executive session, Idaho's statutes require that the Commission of Pardons and Parole deliberate in public.

Question No. 2

Idaho Code § 67-2345(1)(d) of the Open Meeting Act states that executive sessions may be held for the purpose of considering records that are exempt by law from public inspection. This section must be read in conjunction with Idaho Code § 9-301, which states that "[e]very citizen has a right to inspect and take a copy of any public writing

of this state, except as otherwise expressly provided by statutes.” The wording of these two statutory provisions clearly indicates that only certain documents which have been excluded from public inspection by clear statutory provision may be considered in executive session. Furthermore, the Idaho Supreme Court has stated that it would not create an exception to the rule of disclosure where exception has not been explicitly provided by statute: “[s]uch language clearly evidences an intent by the legislature to create a very broad scope of government records and information accessible to the public.” *Dalton v. Idaho Dairy Products Commission*, 107 Idaho 6, 11, 684 P.2d 983 (1984).

Records that are exempt by law from public inspection and would, therefore, be appropriately considered in executive session include: Criminal preliminary hearing transcripts, Idaho Code § 19-813; records of grand jury proceedings, Idaho Code § 19-1112; special inquiry judge proceedings, Idaho Code § 19-1123; and presentence investigations, Idaho Code § 19-2515(d), Idaho Criminal Rules 32(g).

Question No. 3

The Open Meeting Law requires that all voting on a public agency’s decisions must be conducted in public. “No decision at a meeting of a governing body of a public agency shall be made by secret ballot.” Idaho Code § 67-2342(1). “Decision” is defined as “any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.” Idaho Code § 67-2341(1).

The requirement that voting must be conducted in public cannot be circumvented by retiring into executive sessions. “[N]o executive session may be held for the purpose of taking any final action or making any final decision.” Idaho Code § 67-2345(3). *See*, Att’y Gen.Op. 77-13. Thus, matters discussed in executive session must still be voted upon in public.

AUTHORITIES CONSIDERED:

Idaho Constitution art. 4, § 7

Idaho Code § 9-301

Idaho Code § 19-813

Idaho Code § 20-210

Idaho Code § 20-213

Idaho Code § 20-233

Idaho Code § 67-2341(1),(1)(a),(3)(a),(4),(5)

Idaho Code § 67-2342(1)

Idaho Code § 67-2345(3)(d)

Idaho Criminal Rules 6(c)

Idaho Criminal Rules 32(g)(h)

Canney v. Board of Public Instruction of Alachua County, 278 So.2d 260 (Fla. 1973)

Citizen Action Coalition of Indiana, Inc. v. Public Service Commission of Indiana, 425 N.W.2d 178 (Ind. 1981)

City of Harrisburg v. Pickles, 492 A.2d 90 (Pa. 1985)

Common Cause v. Utah Public Service Commission, 598 P.2d 1312 (Utah 1979)

Cooper v. Board of County Commissioners of Ada County, 101 Idaho 407, 614 P.2d 947

Dalton v. Idaho Dairy Products Commission, 107 Idaho 6, 684 P.2d 983 (1984)

Della Serra v. Borough of Mountainside, 481 A.2d 547 (N.J. 1984)

Jordan v. District of Columbia, 362 A.2d 114 (D.C. 1976)

Orr v. State Board of Equalization, 3 Idaho 190, 28 P. 416 (1891)

Raaf v. State Board of Medical Examiners, 11 Idaho 707, 717 (1906)

Swensen v. Buildings, Inc., 93 Idaho 466, 463 P.2d 932 (1970)

Sanders v. Benton, 579 P.2d 815 (Okla. 1978)

Washington Water Power Co. v. Kootenai Environmental Alliance, 99 Idaho 875, 591 P.2d (1979)

Idaho Att'y Gen. Op. 77-13 (1977)

Idaho Att'y Gen. Op. 77-30 (1977)

Ill. Att'y Gen. Op. 83-004 (1983)

Mo. Att'y Gen. Op. 32-83 (1983)

DATED this 31st day of December, 1985.

ATTORNEY GENERAL
State of Idaho
JIM JONES

ANALYSIS BY:

D. MARC HAWS
Deputy Attorney General
Chief, Criminal Justice Division

cc: Idaho Supreme Court
Supreme Court Library
Idaho State Library

ATTORNEY GENERAL OPINION NO. 85-10

TO: Rose Bowman, Director
Idaho Department of Health and Welfare

Per Request for Attorney General Opinion.

QUESTIONS PRESENTED:

For ease of analysis, the questions raised in your letter have been restructured into the following major areas.

- I. Idaho's "Relative Responsibility" law, codified at Idaho Code § 32-1008A, is but one of several laws dealing with liability of parents or spouses for repayment of public assistance, including medical assistance. Which of these laws should be addressed in formulating an application for a waiver under the demonstration program provisions of section 1115 of the Social Security Act?
- II. Under Idaho's relative responsibility law, payments collected from parents and spouses are treated by the state as payments from a legally liable third party if they are made after the state has paid Medicaid bills. Should this practice be addressed in applying for a waiver under the demonstration program provisions of section 1115 of the Social Security Act?
- III. If the waiver of "general applicability" were received, would Idaho's relative responsibility law still violate the Social Security Act by selecting out only the parents, spouses and adult children of Medicaid nursing home clients?
- IV. Assuming that Idaho's relative responsibility program would qualify for a demonstration program waiver under section 1115 of the Social Security Act, the following additional questions must be addressed regarding repayment collections:

- A) Do Idaho's relative responsibility law and other pertinent statutes give the Department of Health and Welfare jurisdiction and authority to collect from non-residents?
- B) Does the Department have to obtain a district court support order prior to obtaining repayment?
- C) Can the Department collect from parents and spouses the amounts paid by Medicaid before the effective date of these rules?

CONCLUSIONS:

- I. The intent of the waiver application is to create a demonstration project along the lines of Idaho's relative responsibility law as that law is contained in Idaho Code § 32-1008A. If the application were carefully drafted to incorporate that precise intent, the other statutes in your letter would be irrelevant.
- II. A waiver request should state that collections shall be treated as payments from legally liable third parties.
- III. It is the responsibility of the federal government to determine whether those provisions of Idaho's relative responsibility law which violate the Social Security Act can be waived pursuant to section 1115 of the same act.
- IV. The collection program problems associated with implementing a relative responsibility program are significant:
 - A) The relative responsibility law does not give the Department of Health and Welfare jurisdiction or authority to collect from nonresidents.
 - B) The Department would have to obtain a district court support order prior to obtaining repayment.
 - C) The Department could not collect from responsible relatives any amounts paid by Medicaid before the effective date of promulgation of the Idaho rules.

BACKGROUND:

Idaho's relative responsibility law, Idaho Code § 32-1008A, became effective on October 1, 1983. The law governs Medicaid patients in licensed skilled nursing facilities and licensed intermediate care facilities. It provides that responsible relatives must pay specific portions of the medical assistance provided to such patients and defines "responsible relatives" to include spouses, *natural and adoptive children* and others.

The Idaho Department of Health and Welfare began to implement this program and adopted appropriate regulations in 1983. However, when the Department began the collection phase of the program, Senator Terry Reilly of the Idaho Legislature

requested an Attorney General's opinion as to whether the new relative responsibility law conformed with federal laws and regulations regarding the use of Medicaid funds.

Pursuant to this request, the Attorney General issued Opinion No. 84-7 on March 23, 1984. That Opinion concluded that Idaho's relative responsibility law was "inconsistent with federal law regulating the use of Medicaid funds" and that a "continuation of the statutory scheme may subject Idaho to federal sanctions and/or private court actions. . . ." 1984 Attorney General Opinion No. 84-7 at 67.

In particular, the Opinion found that Idaho's relative responsibility law was not a law of "general applicability" and that its demand for repayment from responsible relatives violates the intent of Congress, which was that "States may not include in their plans provisions for requiring contributions from relatives other than a spouse or a parent of a minor child. . . ." S.Rep. No. 404, 89th Cong. 1st Sess. 78 (1965).

Subsequent to receipt of Attorney General Opinion No. 84-7, the legislative germane committees requested the Idaho Department of Health and Welfare to seek a waiver of the above-quoted prohibitions in the federal Social Security Act, pursuant to section 1115 of that law. The Department inquired into the possibility of such a waiver and, on November 2, 1984, received a response to its inquiry from Norman V. Meyer, Associate Regional Administrator for Policy of the Department of Health and Human Services. The response states that the federal agency "views the relative responsibility program as an important Medicaid issue; one which is of interest philosophically to this administration." This Opinion addresses the questions surrounding any application Idaho might make for such a waiver.

ANALYSIS:

I. Idaho Statutes Pertinent to a Demonstration Program Waiver.

The following Idaho statutes are mentioned in your opinion request as having possible relevance to the waiver request:

Idaho Code § 56-203A — Authority of Department of Health and Welfare to enforce child support.

Idaho Code § 56-203B — Payment of public assistance for child constitutes debt to the Department by natural or adoptive parents.

Idaho Code § 56-209b(3) — Medical assistance.

Idaho Code § 32-1002 — Reciprocal duties of support.

Idaho Code § 32-1003 — Liability of parent for child's necessities.

Idaho Code § 66-414 — Developmentally disabled persons with assets sufficient to pay expenses, liability of relatives.

Idaho Code § 32-901 — Mutual obligations of husband and wife.

Idaho Code §§ 56-203A, 56-203B, 32-1002, and 32-1003, are specific laws that do not relate to the Medicaid program. Therefore, any responsibility of the Department pursuant to these laws should not be addressed in terms of a waiver/demonstration project pursuant to section 1115 of the Social Security Act.

Idaho Code § 56-209b(3) subrogates the Department to the rights of the patient to recover Medicaid monies from any third party who might be responsible for payment of this expense. However, this section clearly relates only to claims of a Medicaid recipient founded in tort against an outside third party. Therefore, this section does not relate to a third party liability such as addressed by the relative responsibility program and is not relevant to a waiver application.

Idaho Code §§ 56-203A and 56-203B do provide a specific enforcement mechanism requiring the Department to seek recovery against a natural or adoptive parent or parents for any public assistance benefits paid to any child. These specific sections have been enforced for some time in this state and have been implemented and enforced by the child support unit in the Department of Health and Welfare. Therefore, these statutes are not relevant to the proposed waiver application for a demonstration project under 42 U.S.C. 1315.

Idaho Code § 32-1002 imposes reciprocal duties of support upon the father, the mother and the children, who are unable to maintain themselves. This statute specifically refers to the *county* indigency program and does not give the Department responsibility or authority to require repayment for public assistance, including medical assistance and thus is not relevant to a waiver-demonstration project.

Idaho Code § 32-1003 imposes liability upon a parent for furnishing necessities to a child and allows an action by a third party who may provide such support. *Isaacson v. Obendorf*, 99 Idaho 304, 581 P.2d 350 (1978). Although section 32-1003 does not impose a responsibility upon the Department, it does provide a third party authorization for the Department to maintain a cause of action in the case where it has provided public assistance, including medical assistance, payments to a child if such payments are supplied in good faith and are necessary for the support of that child. Therefore, these statutes are not appropriate for the proposed waiver-demonstration project under 42 U.S.C. 1315.

Idaho Code § 32-901 imposes mutual obligations upon the husband and wife to provide support. This section is contained in title 32, chapter 9 of the Idaho Code relating to a husband and wife's separate and community property. It is concerned only with the respective rights of spouses in their community and separate property, and is not a general support statute. *Williams v. Paxton*, 98 Idaho 155, 559 P.2d 1123 (1973); cf. *Linton v. Linton*, 78 Idaho 355, 303 P.2d 905 (1956). Sections 56-203B and 56-203C are the civil statutes authorizing and requiring the Department to require spouses to repay for public assistance, including medical assistance, as defined in Idaho Code § 56-201(e). Idaho Code § 32-709 supports the Department's authority to sue for support where the spouse does not receive public assistance. Therefore, Idaho Code § 32-901 does not authorize or require the Department to require spouses to repay for

aid for dependent children, including medical assistance. Furthermore, Idaho Code §§ 56-203B and 56-203C are not appropriate for the waiver-demonstration project under 42 U.S.C. 1315.

II. Treatment of Collection Procedures Under a Waiver Program.

The policy guidelines issued by the U.S. Department of Health and Human Services, as outlined in Medicaid Manual Transmittal, HFCA pub. 45-3 no. 3812 (February, 1983), specifically note that third party liability regulations at 42 CFR 433, subpart D, do not apply to collections pursuant to a statute of general applicability. Subpart D refers to requirements and options that the state may take pursuant to its state plan under the medicaid program. As these third party liability provisions are state plan requirements, this avenue cannot be used for collections regarding the relative responsibility program. The state agency that administers the Medicaid program may not enforce the statute of general applicability because the medicaid program receives federal financial participation only for expenditures made under an approved state plan. As the Department of Health and Welfare is the designated state agency to administer the medicaid program in Idaho, a statute of general applicability which would authorize the same Department to make collections on the relative responsibility program could come into serious conflict with 42 CFR 435.602(a)(2) and § 436.602(a)(2). This concern should be addressed in the waiver application.

Medicaid Action Transmittal SRS-AT-77-4, dated January 13, 1977, regarding retroactive recoupment specifically relates to considering the financial responsibility of relatives in order to determine eligibility and the amount of benefits. It implies that the regulations do not prohibit a retroactive recoupment pursuant to a statute of general applicability. The Secretary may waive this provision but the policy guideline in publication 45-3 would still have to be followed. As the relative responsibility program set up in section 32-1008A would not deem relative responsibility contributions as income available to the Medicaid applicant or recipient, because it is not actually received by the recipient but by the Department, such a collection program would be permissible.

Under the waiver/demonstration project as guided by the existing provisions of Idaho Code § 32-1008A, subsection (5), the amounts collected under such a relative responsibility program would be received by the Department of Health and Welfare and not by the applicant or recipient. Such a process following the guidelines of Medicaid Manual Transmittal HFCA pub. 43-3 no. 3812 (February, 1983) which would count as third party liability payment and not count such payments as income in determining medical eligibility, would not place the state out of conformance with federal laws and rules regulating the use of Medicaid funds if a specific waiver of 42 CFR 435.602 and 42 CFR 436.602 is included in the application.

III. Validity of the Waiver.

The most important question in your letter requesting an Attorney General Opinion states:

If the waiver of "general applicability" were received, does "Relative Responsibility" (Idaho Code, Section 32-1008A) still violate Section 1902(1) (17) (D) of the Social Security Act (42 USC, Section 1396a(17) (D))?

The simple answer is that when the federal government grants a waiver of certain statutory requirements, a state agency must consider those requirements waived, or at least must be held harmless for actions taken in violation of those requirements.

As mentioned earlier, the federal official contacted regarding a waiver in this instance has replied that Health and Human Services regards "the relative responsibility program as an important Medicaid issue" and that it is "one which is of interest philosophically to this administration." The response went on to say that "[t]he waiver authority contained in section 1115 [of the Social Security Act] would be the appropriate authority for conducting a demonstration of this type." Finally, the response stated: "It would appear, at a minimum, that waivers would be needed of Section 1902(a) (17) (D) of the act and accompanying regulations and regulatory citations concerning the prohibition against treating relative contributions as third party liability."

In short, the federal government has initially assured the Idaho Department of Health and Welfare that the present administration is interested in sponsoring a demonstration project along the lines of Idaho's relative responsibility program; that a waiver under section 1115 of the Social Security Act is the appropriate mechanism for such a waiver; and that, at a minimum, the waiver application must seek exemption from all federal provisions (both statutory and regulatory) that would otherwise forbid a state from requiring adult children to pay their parents' Medicaid bills.

The communication from the federal agency outlines the considerations that will determine whether such a demonstration project might be accepted:

I would emphasize, however, that this [waiver] authority is limited to demonstrations that test hypotheses and provide data and information that enable us to make national policy decisions.

This communication comports with the generally recognized principle that the Secretary of the Department of Health and Human Services is vested with broad powers to authorize projects which do not fit within permissible statutory guidelines of the standard public assistance programs pursuant to section 1115 of the Social Security Act, 42 USC § 1315. *Aguayo v. Richardson*, 352 F.Supp. 462 (S.D.N.Y.), *aff'd*, 473 F.2d 1090 (2d Cir. 1973), *cert. den.*, 414 U.S. 1146, 94 S.Ct. 900, 39 L.Ed.2d 101 (1973).

The only limitation upon the Secretary's authority under section 1115 is that he must judge the project to be one which is likely to assist in promoting the objectives of the applicable title of the Act. *Id.* Congress has entrusted this judgment to the Secretary and not to the courts.

Thus, once a project has been approved by the Secretary, it is the function of the courts only to determine whether his decision was arbitrary and capricious and lacking in rational basis.

Crane v. Matthews, (D.C. Ga. 1976) 417 F.Supp. 532, 539. The Secretary may waive a state's compliance and conformance with section 1902(a) (17) of the Social Security Act (42 U.S.C. 1396(a) (17)) which requires a law of general applicability for a relative responsibility program, provided that such authority of the Secretary is not exercised arbitrarily, capriciously, or on an irrational basis, and such waiver is likely to assist in promoting the objectives of the Medicaid law. *California Welfare Rights Organization v. Richardson*, 348 F.Supp. 491 (D.C. Cal. 1972).

The communication from the regional representative of the Department of Health and Human Services also makes clear the obligations that Idaho's Department of Health and Welfare must assume in undertaking such a demonstration project:

In order for this project to be considered for approval, the State of Idaho would have to complete the attached grant application and submit it for review by a technical panel of government and nongovernment individuals knowledgeable in the field of social science research.

The application would have to include, among other things, a clear statement of goals and objectives, specific hypotheses to be tested, a well-formulated research design and evaluation plan, a thorough explanation of the data to be collected and a plan for using that data, an analysis of the potential utilization of the findings and an assessment of the applicant's potential for implementing the project.

In other words, the "waiver" would not simply be a waiver to go forward with Idaho's relative responsibility program. If Idaho's waiver application is to be approved, it will be because Idaho has committed significant resources to running a sophisticated, scientifically valid demonstration program. The purpose is not to exempt Idaho from a federal requirement, but to use Idaho as a test laboratory (at Idaho's expense) to run an experiment.

Such a demonstration project could be used to test such reasonable hypotheses as whether a relative responsibility program would cause Idaho residents not to enter nursing homes in Idaho or to enter nursing homes in other states. Such goals and objectives would provide data for the federal agency to evaluate the effects of the program and to determine if it is workable for all states and would not meet with a great deal of public resistance.

Further, it must be stressed that waiver programs approved under section 1115 of the Social Security Act cannot last longer than two years. Thus, it must be clearly understood at the outset that federal approval of a waiver application would not imply a long-term approval of Idaho's relative responsibility program.

IV. Collection Problems.

The final cluster of questions in your opinion request deals with residual collection programs that may arise even if the state succeeds in having its waiver application approved.

A. First, you ask whether Idaho Code §§ 32-1008A and 5-514 give the Idaho Department of Health and Welfare jurisdiction and authority to collect relative responsibility payments from responsible relatives who do not reside in Idaho. Idaho Code § 32-1008A(1) directs the Department to collect from all responsible relatives of a Medicaid recipient. Subsection (4) authorizes the Department to enter into reciprocal enforcement agreements if similar provisions are enacted by another state. It does not address long-term jurisdiction at all. Neither does it avail if other states lack reciprocal enforcement agreement statutes, as is generally the case.

Idaho Code § 5-514 is the general long-arm statute but contains no provision which may be relied upon for out of state jurisdiction under the relative responsibility program. Even though this section is intended to confer all the jurisdiction available under the due process clause of the U.S. Constitution, traditional notions of fair play and substantial justice would require, at the very least, that there be some specific area of contact with the state. *Southern Idaho Pipe and Steel Co. v. Cal-Cut Pipe and Supply, Inc.*, 98 Idaho 495, 567 P.2d 1246 (1977), cert. den., 98 S.Ct. 1225, 55 L.Ed. 2d 757 (1978); *Duignan v. A.H. Robbins Co.*, 98 Idaho 134, 559 P.2d 750 (1977).

The mere relationship of a parent and child is not sufficient to meet the due process test requiring minimum contacts or a sufficient connection of the non-resident with the state so as not to offend the traditional notions of fair play and substantial justice. There must be some act by which a non-resident avails himself of the privileges of conducting activities within this state and clear notice that the defendant is subject to suit here. *Columbia Briargate Co. v. First National Bank*, 713 F.2d 1052 (4th Cir. 1983); *Idaho Potato Com'n v. Washington Potato Com'n* 410 F.Supp. 171 (D.C. Idaho 1976).

Idaho Code § 5-514 is modeled after an Illinois statute which has been liberally construed to extend jurisdiction to a non-resident who fathered an illegitimate child in the state by treating paternity as a tortious act committed in the state. *Poindexter v. Willis*, 87 Ill. App.2d 213, 231 N.E.2d 1 (1967). Idaho Code § 32-1008A places a duty upon responsible relatives. But there would be no tortious act committed in the state, only a lack of contribution to help pay voluntary nursing home costs. Nor would there be any Medicaid application, agreement or assurance made in the state or to anyone in the state by the non-resident. This is not sufficient to meet the due process and fundamental fairness test. *Madison Consulting Group v. South Carolina*, 53 U.S.L.W. 2358 (C.A. 7 1985); *Wright v. Yackley*, (9th Cir. 1972) 459 F.2d 287; *Tillay v. Idaho Power Company*, 425 F. Supp. 376 (D.C. Wash. 1976); *Jurisdiction Over Non-resident Parent*, 76 A.L.R.3d 708 (1977). There is no language whatsoever in this subsection which could be construed to authorize out of state jurisdiction due to the fact that an individual may meet the definition of responsible relative within Idaho Code § 32-1008A.

The difficulties that will be encountered can readily be seen by referring to the history of the child support enforcement program. Several years ago states had substantial difficulties in attempting to enforce their child support obligations in other states when the father was not a resident of the same state as the mother and child. There was spotty and ineffective enforcement because the various states did not cooperate with one another without any requirement to enter into reciprocal enforcement

agreements. The federal government stepped into this area by adopting the Uniform Reciprocal Enforcement of Support Act (URESA) requiring that federal financial assistance would be unavailable unless each state cooperated with other states to enforce their respective child support laws and judgments. Idaho adopted URESA in 1969, Idaho Code § 7-1948 et seq. A viable medicaid relative responsibility program should be conducted under the auspices of a federal statute or regulation which requires all states to cooperate with one another in their collection and enforcement efforts. Without this, an effective system that avoids the aforementioned constitutional problems would be difficult to obtain.

B. The relative responsibility program, of course, may obtain voluntary repayments in accordance with applicable rules and regulations adopted pursuant to the authority of Idaho Code § 32-1008A. However, in the event that a responsible relative does not voluntarily comply with the provisions of the program, the Department would be required to obtain a judgment or support order in a district court prior to being able to enforce judgment and execute thereon pursuant to Idaho Code §§ 8-505, 506, 528 and 529. By analogy a reference to Idaho Code § 56-203D(1)(a) indicates that repayment must be established by judgment.

C. The Idaho Administrative Procedure Act, Idaho Code §§ 67-5201, et seq., would require the Department to adopt and promulgate rules and regulations pursuant to the various statutes relied upon for authority to collect from parents and spouses the amounts paid by Medicaid. Even though the authorizing statutes have been in existence for some time, they are not self executing and would require appropriate rules and regulations. Thus, the Department could not collect from parents and spouses amounts paid by Medicaid before the effective date of rules properly promulgated under the Idaho Administrative Procedure Act.

It must be noted that the simplest and clearest approach for the State of Idaho would be for the legislature to amend Idaho Code § 32-1008A to make it a law of general applicability and address the other concerns expressed herein. The restrictions and limited life of a section 1115 waiver-demonstration experiment would not effectively carry out the legislative purpose in adopting Idaho Code § 32-1008A. Even if the federal agency approved a comprehensive waiver application that would hold the state harmless from losing federal funding, it would not bar third parties from initiating litigation that could adversely impact federal funding and expose the state to liability for the costs and attorney fees of such a lawsuit. *Aguayo v. Richardson, supra*. This opinion cannot assure that the exercise of the secretary's discretion in approving a waiver request would survive judicial review.

AUTHORITIES CONSIDERED:

1. Statutes:

Idaho Code § 5-514

Idaho Code §§7-1048 et seq.

Idaho Code § 18-401-405

Idaho Code § 32-709

Idaho Code § 32-901

Idaho Code § 32-1002

Idaho Code § 32-1003

Idaho Code § 32-1008A

Idaho Code § 39-1301

Idaho Code § 56-201(e)

Idaho Code § 56-203A

Idaho Code § 56-203B

Idaho Code § 56-203D

Idaho Code § 56-209b(3)

Idaho Code § 66-414

Idaho Code §§ 67-5201 et seq.

Social Security Act § 1115; 42 USC § 1315

Social Security Act § 1902(a) (17) (D); 42 USC § 1396a(a) (17) (D)

2. Idaho cases:

Isaacson v. Obendorf, 99 Idaho 304, 581 P.2d 350 (1978)

Williams v. Paxton, 98 Idaho 155, 559 P.2d 1123 (1973)

Linton v. Linton, 78 Idaho 355, 303 P.2d 905 (1956)

Southern Idaho Pipe and Steel Company v. Cal-Cut Pipe and Supply, Inc., 98 Idaho 495, 567 P.2d 1246 (1977), cert. den., 434 U.S. 1056, 98 S.Ct. 1225, 55 L.Ed. 2d 757 (1978)

Duignan v. A. H. Robbins Co., 98 Idaho 134, 559 P.2d 750 (1977)

Idaho Potato Com'n v. Washington Potato Com'n, 410 F. Supp. 171 (D.C. Idaho 1976)

3. Cases Cited From Other Jurisdictions:

Aguayo v. Richardson, 473 F.2d 1090 (2d Cir. 1973)

Potter v. James, 499 F. Supp. 607 (D.C. Ala. 1980)

Crane v. Matthews, 417 F. Supp. 532 (D.C. Ga. 1976)

California Welfare Rights Organization v. Richardson, 348 F. Supp. 491 (D.C. Cal. 1972)

Columbia Briargate Company v. First National Bank, 713 F.2d 1052 (4th Cir. 1983)

Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972)

Tillay v. Idaho Power Company, 425 F. Supp. 376 (D.C. Wash. 1976)

4. Other Authorities:

S. Rep. No. 404, 89th Cong. 1st Sess. 78 (1965)

H.R. Rep. No. 213, 89th Cong. 1st Sess. 68 (1965)

42 C.F.R. 433, subpart D

42 C.F.R. 435.602

42 C.F.R. 436.602

Medicaid Manual Transmittal, H.C.F.A. Pub. 45-3, No. 3812 (February, 1983)

Medicaid Action Transmittal SRS-AT-77-4 (January 13, 1977)

Attorney General Opinion No. 84-7 (March 23, 1984)

Jurisdiction Over Nonresident Parent, 76 A.L.R. 3d 708

DATED this 31st day of December, 1985.

JIM JONES
ATTORNEY GENERAL
STATE OF IDAHO

ANALYSIS BY:

MICHAEL DE ANGELO
Deputy Attorney General
Chief, Health and Welfare Division

Topic Index
and
TABLE OF STATUTES CITED
OFFICIAL OPINIONS
1985

1985 OFFICIAL OPINIONS INDEX

TOPIC	OPINION	PAGE
CORRECTIONS		
Meetings of Commission of Pardons and Parole are subject to Open Meeting Law.	85-9	50
ENDOWMENT FUNDS		
To avoid violation of constitutional and land grant provisions, the special fund provided by Idaho Code § 58-140 should be consolidated in the agency asset fund.	85-3	14
Permanent endowment funds may be invested in money market mutual funds.	85-4	20
State Treasurer, as custodian of public school fund, may refuse to open accounts or transfer investments for clearly illegal investments.	85-4	20
FINANCE		
The Department of Finance may destroy useless bank records.	85-6	38
INSURANCE		
Cities, counties and other political subdivisions of the state, are not subject to automobile insurance liability laws.	85-8	46
JUDICIAL		
Appointment of member of judiciary to Children's Trust Account would violate separation of powers clause.	85-5	31
LABOR AND INDUSTRIAL SERVICES		
Dedicated fund division of Department of Labor and Industrial Services must comply with budgeting and appropriation procedures of ch. 35, title 67, Idaho Code, before expending dedicated funds.	85-7	43
OPEN MEETING LAW		
Meetings of the Commission of Pardons and Parole are subject to the Open Meeting Law.	85-9	50
Only documents excluded from public inspection by statute may be considered in executive session.	85-9	50

TOPIC	OPINION	PAGE
Voting by public agencies must be conducted in public. . . .	85-9	50
HEALTH AND WELFARE		
Provisions of Relative Responsibility Law, requiring relatives to repay nursing home expenses under medicaid, violate Social Security Act.	85-10	56
REVENUE AND TAXATION		
Personal property tax liens are superior to prior perfected purchase money security interests.	85-1	5
UNCLAIMED PROPERTY ACT		
The Unclaimed Property Act as applied to unclaimed funds during bank liquidation.	85-6	38
WATER RESOURCES		
Water Resources Board has authority to issue revenue bonds for hydroelectric power project.	85-2	9

1985 OFFICIAL OPINIONS CITATIONS FROM IDAHO CONSTITUTION

ARTICLE & SECTION	OPINION	PAGE
ARTICLE II		
§ 1	85-5	..... 31
ARTICLE IV		
§ 7	85-9	..... 50
ARTICLE V		
§ 7	85-5	..... 31
ARTICLE VII		
§ 2	85-1	..... 5
§ 7	85-1	..... 5
ARTICLE VIII		
§ 2	85-4	..... 20
ARTICLE IX		
§ 3	85-4	..... 20
§ 7	85-3	..... 14
§ 8	85-3	..... 14
§ 11	85-4	..... 20
ARTICLE XV		
§ 7	85-2	..... 9

1985 OFFICIAL OPINIONS IDAHO CODE CITATIONS

CODE	OPINION	PAGE
5-514	85-10	..... 56
6-903	85-8	..... 46
6-912	85-8	..... 46
6-919	85-8	..... 46
6-923	85-8	..... 46
6-927	85-8	..... 46
6-926	85-8	..... 46
7-1048 et seq.	85-10	..... 56
8-505	85-10	..... 56
8-506	85-10	..... 56
8-528	85-10	..... 56
8-529	85-10	..... 56
9-301	85-9	..... 50
Title 14, chapter 5	85-6	..... 38
14-501 et seq.	85-6	..... 38
14-502	85-6	..... 38
14-511	85-6	..... 38
14-513	85-6	..... 38
14-517	85-6	..... 38
14-519	85-6	..... 38
14-538	85-6	..... 38
18-410 et seq.	85-10	..... 56
19-813	85-9	..... 50
19-1112	85-9	..... 50
19-1123	85-9	..... 50
19-2515(d)	85-9	..... 50
20-210	85-9	..... 50
20-213	85-9	..... 50
20-233	85-9	..... 50
26-919	85-6	..... 38
Title 26, chapter 10	85-6	..... 38
26-1001 et seq.	85-6	..... 38
26-1016	85-6	..... 38
26-1017 et seq.	85-6	..... 38
26-1023	85-6	..... 38
28-9-102(2)	85-1	..... 5
28-9-310	85-1	..... 5
32-709	85-10	..... 56
Title 32, chapter 9	85-10	..... 56
32-901	85-10	..... 56
32-1002	85-10	..... 56
32-1003	85-10	..... 56
32-1008A	85-10	..... 56
32-1008A(1),(4),(5)	85-10	..... 56

CODE	OPINION	PAGE
39-4124	85-7	.... 43
39-6001 et seq.	85-5	.... 31
39-6002(a),(d)	85-5	.... 31
39-6003	85-5	.... 31
39-6008	85-5	.... 31
42-1731	85-2	.... 9
42-1732	85-2	.... 9
42-1734(x),(s)	85-2	.... 9
42-1751(d)	85-2	.... 9
49-232	85-8	.... 46
49-233	85-8	.... 46
49-1521	85-8	.... 46
49-1533	85-8	.... 46
54-1015	85-7	.... 43
54-2630	85-7	.... 43
56-201(e)	85-10	.... 56
56-203A	85-10	.... 56
56-203B	85-10	.... 56
56-203C	85-10	.... 56
56-203D(1)(a)	85-10	.... 56
56-209b(3)	85-10	.... 56
57-722	85-4	.... 20
57-722(3)(b)	85-4	.... 20
57-722(8)	85-4	.... 20
57-724	85-4	.... 20
57-803	85-3	.... 14
57-803(a),(n)	85-3	.... 14
57-804	85-3	.... 14
57-804(2)	85-3	.... 14
58-140	85-3	.... 14
63-102	85-1	.... 5
66-414	85-10	.... 56
67-1210	85-3	.... 14
67-2341 et seq.	85-9	.... 50
67-2341(1)(a)	85-9	.... 50
67-2341(3)(a)	85-9	.... 50
67-2341(4),(5)	85-9	.... 50
67-2342(1)	85-9	.... 50
67-2345(1)(d)	85-9	.... 50
67-2345(3)	85-9	.... 50
67-2347	85-9	.... 50
Title 67, chapter 35	85-7	.... 43
67-3503	85-7	.... 43
67-3505	85-7	.... 43
67-3507	85-7	.... 43
67-3514	85-7	.... 43
67-3516	85-7	.... 43
67-3530	85-7	.... 43

CODE	OPINION	PAGE
67-5201 et seq.	85-10	..... 56
67-5751	85-6	..... 38
67-5752	85-6	..... 38
67-5753	85-6	..... 38
67-5757	85-8	..... 46
Idaho Criminal Rule 32(g)	85-9	..... 50

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

January 10, 1985

The Honorable Terry Sverdsten
Idaho State Senator
District #3
Statehouse
Boise, ID 83720

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Senator Sverdsten:

During the last legislative session you raised some questions concerning timber sales on state endowment lands and requested that this office provide you with some legal guidance on the issue prior to the 1985 legislative session. Your request has been forwarded to me for response.

ISSUE:

Can the State of Idaho deduct from the gross proceeds of an endowment timber sale the administrative costs of conducting the sale without violating the endowment provisions of the Idaho Admission Bill or the Idaho Constitution?

CONCLUSION:

The Idaho Admission Bill does not appear to preclude recovery of timber sale administrative expenses from endowment trust proceeds. However, although several credible arguments can be made for the proposition that the Idaho Constitution does not prohibit the deduction of timber sale expenses from the gross proceeds of a sale, it appears that a 1977 Idaho Supreme Court decision may prevent such practice.

ANALYSIS:

Before addressing your specific question, the present method of accounting for revenues and expenses on endowment timber lands should be reviewed. Currently, the cost of preparing timber sales together with general timber management expenses are paid for from the general funding of the department of lands, but the money earned is placed in the endowment fund. Capital expenditures which enhance the market value, productivity, and income capacity of specific endowment lands are paid for by the "ten percent fund." This is a special fund consisting of a percentage of the income from specific endowment lands, which can only be used as a reinvestment upon the lands from which the monies accrued. Idaho Code § 58-1140. Finally, appraisal and scaling costs are defrayed by the use of a surcharge on timber sales. Idaho Code § 58-301 and Idaho Code § 58-416.

The State of Idaho holds endowment lands under an express trust for the benefit of the designated beneficiaries. Idaho Const. art. IX, § 8; *Ervien v. United States*, 251 U.S. 41, 64 L.Ed. 128 (1919). If there are no conflicting terms of purposes expressed in

the enabling act or the state constitution, it is generally accepted that the state is bound by the rules applicable to private trusts. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914); *United States v. Swope*, 16 F.2d 215 (8th Cir. 1926); *Oklahoma Education Ass'n, Inc. v. Nigh*, 642 P.2d 230 (Okla. 1982). Thus, resolution of the issue posed requires an examination of the language of both the Idaho Admission Bill and the Idaho State Constitution.

Sections 4, 5, 6, 8, 10, 11, and 12 of the Idaho Admission Bill enumerate the state land grants and their purposes. An examination of the Admission Bill discloses no express provision requiring the state to bear the costs of administration from its general revenues. The language in sections 5, 8, and 12, however, might arguably be interpreted as requiring the state to assume the costs of administration.

The three critical phrases in the Admission Bill that might be construed as requiring the state to assume administrative expenses associated with state endowment lands are as follows: First, section 12 states that, "Lands granted by this section shall be held, appropriated, and disposed of *exclusively* for the purposes herein mentioned. . . ." Second, section 8 requires that income generated by university lands be used "*exclusively* for university purposes." Finally, both sections 5 and 8 require that "*proceeds* [from sale of school endowment lands are] to constitute a permanent school fund."

Though it can be argued that *exclusively* means no other use and *proceeds* means gross proceeds, *c.f.*, *Opinion of the Justices*, 47 So.2d 729 (1950), most courts and state legislatures that have considered the issue interpreted the words so as not to preclude the state from recovering administrative expenses. *See, e.g.*, *United States v. Swope*, 16 F.2d 215 (8th Cir. 1926); *State ex rel. Greenbaum v. Rhoades*, 4 Nev. 312 (1868); *Bourne v. Cole*, 53 Wyo. 31, 77 P.2d 617 (1938); Wash. Att'y Gen. Op. 59-60, No. 150 (1960); 32 Mont. Att'y Gen. Op. No. 8 (1967).

New Mexico is the only state that has litigated the administrative expense issue extensively. Its experience is particularly relevant to our state for two reasons. First, it is the only state where both federal and state courts have interpreted an enabling act. Since the grant involves both federal and state interests, the litigation gives a fairly accurate view of the intent behind the state land grants. Second, the section of the New Mexico Enabling Act being construed by the courts is substantially similar to Idaho's Admission Bill. For example, neither act makes reference to administrative costs; they merely require that the "*proceeds*" be placed in a permanent fund and prohibit the comingling or use of the fund for any other object than the one specified in the grant.

The first interpretation of the New Mexico Enabling Act occurred in 1919. At issue was a state statute directing the state land commission to expend three percent of the annual proceeds from the trust lands to publicize the advantages of living in New Mexico. In *Ervien v. United States*, 251 U.S. 41, 64 L.Ed. 128 (1919), the Supreme Court held Congress could not have intended for the proceeds of such trust lands to be used for general governmental purposes.

Approximately seven years later, the United States Eighth Circuit Court of Ap-

peals considered the constitutionality of a New Mexico statute that appropriated twenty percent of the income derived from any trust lands for the purpose of paying expenses incurred in the administration of the lands. In *United States v. Swope*, 16 F.2d 215 (1926), the court upheld the statute. Relying on the trust analogy in *Ervien*, the court stated:

It is conceded that the grant of lands was upon an express trust. The rule of construction of such trusts is that the absence of a provision for the payment of the reasonable and proper costs and expenses of administering the trust does not throw such expense upon the shoulders of the trustees, but the trustees have an inherent equitable right to be reimbursed for such expenses incurred.

Id. at 217. The persuasiveness of the *Swope* opinion becomes more apparent after considering that the federal government had specifically required New Mexico to bear the costs of administration of lands granted for an agriculture or a mining college but made no express reference to such costs in the other grants. (See also, *State ex rel. Greenbaum v. Rhoades*, 4 Nev. 312 (1868). Nevada's enabling act also resembles Idaho's Admission Bill.)

The last two cases involving the New Mexico Enabling Act make explicit the implicit rule developed in *Ervien* and *Swope*. In *State v. Mecham*, 250 P.2d 897 (1952), the New Mexico Supreme Court struck down a statute that appropriated five percent of the trust funds to defray general governmental expenses. After considering *Ervien* and *Swope*, the court held that Congress did not intend for the trust funds to be used for general administrative expenses. In *United States v. State of New Mexico*, 536 F.2d 1324 (10th Cir. 1976), however, the United States Court of Appeals reconfirmed the state's right to reimbursement for expenses arising exclusively from the administration of trust property.

Since the Idaho Admission Bill constitutes a federal grant, the grantor's intent should be controlling. Thus, the fact that two federal courts have interpreted an enabling act similar to Idaho's as allowing the deduction of administrative expenses resulting from the management of trust property provides a significant basis for arguing that the Idaho Admission Act does not preclude such action. Whether the Idaho Constitution precludes such deductions, however, is less certain.

The sections of the constitution critical to analysis of this issue are as follows: Article IX, § 8 of the Idaho Constitution provides for the disposition of state endowment lands. Section 8 states that the State Board of Land Commissioners shall provide for the sale of the land and "for the sale of timber . . . and for the faithful application of the *proceeds* thereof in accordance with the terms of said grants . . ." Further, the board is charged with securing the "maximum long-term financial return. . . ." Article IX, § 4, defines the public school fund as including "the *proceeds* of such land as has heretofore been granted, or may hereafter be granted, to the state by the general government as school lands. . . ." Finally, art. IX, § 3, requires that the fund is to remain "involute and intact forever." It states, further, "[n]o part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided."

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

As in the Idaho Admission Bill, the Idaho State Constitution contains no specific provision requiring the state to bear the expense of administration of trust lands. If a duty to bear expenses is to be found, it must be based upon an interpretation that *proceeds* means gross proceeds not net proceeds.

Although the Idaho Supreme Court did not define “proceeds” in the case of *Moon v. Investment Bd.*, 98 Idaho 200, 5760 P.2d 871 (1977), the court’s decision in *Moon* poses a substantial impediment to the use of sale proceeds to pay the expenses of the sale. The following discussion will first consider the *Moon* decision and then will detail some arguments supporting a more liberal interpretation of the term “proceeds.”

The Idaho Supreme Court has taken a very protective stance toward the endowment lands. In *State v. Peterson*, 61 Idaho 50, 97 P.2d 603, 604 (1939), the court said:

[T]hese public school endowment funds are trust funds of the highest, most sacred order, made so by Act of Congress and the Constitution so considered by members of the constitutional convention and so recognized and declared by this court.

Thus, it is not too surprising that the supreme court strictly construed art. IX, § 3, of the Idaho Constitution in *Moon*.

At issue in *Moon* was an appropriation of trust income for the purpose of defraying the investment board’s trust management expenses. In a per curiam opinion with Justice Shepard dissenting, the court held that the legislation authorizing the transfer violated art. IX, § 3, of the Constitution of the State of Idaho. *Id.* at 201. Justice Shepard, in a persuasive dissent, argued that there was a presumption of constitutionality of legislative action. *Id.* He found it difficult “to conceive that the drafters of the constitution, while specifically providing that the corpus of the public school funds should remain ‘inviolat’ in requiring the makeup of all losses to said fund, also meant that the gross earnings from the investment are similarly ‘inviolat’ from all costs reasonably incurred in the investment process. . . .” He added, “[i]n my judgment the general law is clear that a trustee is entitled to reimbursement or setoff of those expenses reasonably incurred in the investment and administration of the trust corpus.” *Id.*

Though the *Moon* decision is distinguishable because it involved the money in the school fund rather than what is to be deposited into the fund (gross or net proceeds), the court’s superficial treatment of § 3 suggests that it will be an uphill battle to convince the court that administrative expenses are a proper deduction. Yet, there are four credible arguments for such an interpretation.

First, nothing in the constitutional convention suggests such a restrictive reading. The entire debate centered on the issue of whether the endowment lands should ever be sold. There was no discussion of expenses of administration per se. In fact, the expense of administration was only mentioned twice, and both times it was assumed by the speaker that the administrative expenses would be deductible from the proceeds. 1 Idaho Const. Conv. 739, 744-45 (1889) (Mr. Claggett and Mr. Grey speaking). While these passing comments alone offer little assistance in ascertaining the draf-

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

ters' intent, when combined with the absence of debate on the issue and the drafters' specific reference in art. IX, § 8, to applying the grants to the purposes for which Congress made them, they suggest that the convention did not intend a more restrictive interpretation than did Congress. If the drafters had intended a more restrictive reading they could have clearly expressed their intent. Therefore, the term "proceeds" is subject to being interpreted in light of *Swope* and *Rhoades*. See, *State ex rel. Forks Shingle Co., Inc. v. Martin*, 83 P.2d 755 (Wash. 1938).

Second, since the drafters used the legal term "trust" in art. IX, § 8, it must be assumed that they were familiar with the existing body of trust law and the right of set-off. This assumption would not be inconsistent with the protective attitude of the drafters because trust rules place well defined limitations on diversion of trust assets. Impliedly, the Washington Supreme Court adopted this reasoning in upholding a statute that directed that trust properties bear the timber sale costs. *State ex rel. Forks Shingle Co., Inc. v. Martin*, supra.

Third, art. IX, § 8, requires the board to protect the lands for the purpose granted. Presumably, the federal government and the drafters of the state constitution would not have relied on the uncertain nature of future appropriations by the state to guarantee the preservation of the trust lands. Uppermost in their minds was a perpetual base of funding for the benefit of all the designated beneficiaries.

Fourth, all of the states operating under similar constitutional provisions have assumed that administrative expenses are deductible from the trust assets, and their interpretation should be given some deference. See, e.g., Wash. Rev. code § 76.65.030 (1981); Wash. Att'y Gen. Op. 59-60, No. 150 (1960); 32 Mont. Att'y Gen. Op. No. 8 (1967).

A review of the Idaho Code suggests that the legislature has followed the uniform practice. For example, Idaho Code § 58-140 appropriates ten percent of the monies received from the sale of standing timber, from grazing leases and from recreation site leases for the maintenance, management, and protection of state-owned lands. Interestingly, the statute goes on to adopt the *Ervien-Swope* reasoning to require that the proceeds only be applied to the trust lands from which they were generated.

In conclusion, the Idaho Admission Bill does not appear to preclude recovery of timber sale administrative expenses from endowment trust proceeds. However, although several credible arguments can be made for the proposition that the Idaho Constitution does not prohibit the deduction of timber sale expenses from the gross proceeds of a sale, it appears that a 1977 Idaho Supreme Court decision may prevent such practice.

If this office can be of further assistance, do not hesitate to contact us.

Sincerely,

RINDA RAY JUST
Deputy Attorney General
Natural Resources Division

RRJ:tg

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

January 16, 1985

Mr. Bruce H. Birch
Prosecuting Attorney
Payette County
P.O. Box 157
Payette, ID 83661

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Mr. Birch:

You have requested an opinion regarding (1) the legal age for the consumption of alcohol, (2) statutory prohibitions against furnishing alcohol to or procuring alcohol for persons under age, and (3) the scope of exceptions, as set forth in Idaho Code § 23-1023, to these statutory proscriptions.

Specifically, you request guidance on how the exceptions in Idaho Code § 23-1023 apply to the holding of graduation parties "on private property each year, at which parties minors are allowed to consume alcohol under the supervision of chaperones."

As you note in your letter, the answers to your first two questions are clear-cut. The legal age for consumption of alcohol is nineteen years or older. Idaho Code § 23-949 (alcoholic liquor); 23-1023 (beer); 23-1334(a) (wine). A person who furnishes or procures alcohol to or for a minor is guilty of a misdemeanor. Idaho Code §§ 18-1502(a); 23-603; 23-1023; see Idaho Code §§ 23-929; 23-1013; 23-1334(b) and (d).

The answer to your final question — i.e., the scope of exceptions to these statutory prohibitions — is less clear. You raise several concerns and the statute itself raises still others.

The plain and literal wording of the statute must be our starting point. *Local 1494 of International Association of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 639, 586 P.2d 1346 (1978). Thus, we begin by quoting the statute, Idaho Code § 23-1023, in full:

Any person who shall procure beer for any person under nineteen (19) years of age or any person under nineteen (19) years of age who shall purchase, attempt to purchase or otherwise procure, consume or possess beer, shall be guilty of a misdemeanor. This section does not apply to possession by a person under the age of nineteen (19) years making a delivery of beer in pursuance of the order of his parent or in pursuance of his employment, or when such person under the age of nineteen (19) years is in *a private residence accompanied by his parent or guardian* and with such parent's or guardian's consent. (emphasis added)

Your first concern is whether the "private residence" exception is limited exclusively to the residence of a parent or guardian. A plain reading of Idaho Code §

23-1023 is that it does not restrict possession of beer by a minor to the private residence of the minor's parent or guardian. Possession is allowed in "a" — or *any* — private residence so long as the minor is accompanied by his or her parent or guardian and has the parent's or guardian's consent.

Next, you ask whether "the supervision of (adult) chaperones" can substitute for that of the minor's own "parent or guardian," as required by statute. The answer is no. Under Idaho law, a person becomes the "guardian" of a minor only by "testamentary appointment or upon appointment by the court." There is no precedent, either in Idaho law or elsewhere, for a loose usage of the word "guardian" that would extend to chaperones. See 39 Am.Jur. 2d "Guardian and Ward."

Thus, in the graduation party context, the exception carved out by Idaho Code § 23-1023 does extend to the private residences of adults other than the minor's parents or guardian; but it does not extend to substitution of chaperones for that of the minor's own parents or guardian.

A final cluster of problems surrounding Idaho Code § 23-1023 poses a trap for the unwary and a dilemma for prosecutors. On these items, we offer only the fruits of our research. Enforcement obviously remains a delicate matter of prosecutorial discretion.

For one thing, it should be pointed out that the Idaho Code § 23-1023 exception to the state's alcoholic beverage laws appears only in chapter 10, i.e., "the beer law." There is no parallel exception in chapter 9 (the alcoholic liquor law) or in chapter 13 (the wine law). Thus, even if Idaho Code § 23-1023 can be construed to allow minors to consume beer in a private residence when accompanied by a consenting parent or guardian, no such exception exists for wine or other alcoholic beverages. Taken literally, this would mean that a parent could not serve a minor a cup of Christmas egg nog, or a sip of New Year's Eve champagne, or even a glass of wine at a religious Passover observance.

Furthermore, as you note in your letter, the exception spelled out in the beer law is unambiguous only with regard to "possession," not "consumption," of beer. The plain reading of Idaho Code § 23-1023 is that a minor may *possess* beer (1) if making a delivery for his or her parent or employer, or (2) if in a private residence, accompanied by and with the consent of his or her parent or guardian.

It would be plausible to read the second portion of Idaho Code § 23-1023 as allowing a minor to lawfully *consume* as well as "possess" beer, and as allowing an adult to lawfully procure the beer, so long as the "private residence" exception is otherwise satisfied. An argument supporting this contention would be that Idaho Code § 23-1023 should be construed to make sense. *Gavica v. Hanson*, 101 Idaho 58, 60, 608 P.2d 861 (1980). And the section does not make much sense if construed as allowing possession but not consumption.

Though plausible, such a reading might not prevail. Taken literally, the entire second sentence of Idaho Code § 23-1023 applies only to *possession*, not consumption, of beer. This restricted reading is supported by the title of the enacting bill, which read in

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

part: “. . . AND MAKING EXCEPTION TO CERTAIN KINDS OF ‘POSSESSION.’” 1967 Sess.L., Ch. 351 at 995.

Moreover, the conspicuous omission of “consumption” from the second sentence — after “consume” is specifically enumerated in the first sentence along with “possess” — could be read as a deliberate exclusion of consumption from the ambit of the second sentence. See *Local 1494*, supra at 639; *Peck v. State*, 63 Idaho 375, 380, 120 P.2d 820 (1941).

Also troubling is the fact that the prohibitions against procuring and furnishing beer for minors, set forth in Idaho Code § 23-1023 and other sections cited above, are not expressly excepted by the express wording of Idaho Code § 23-1023. Taken literally, this could lead to the result that Idaho Code § 23-1023 gives a minor the right to possess beer, but denies any legal means (i.e., procurement by adults) to transform the right into a practical reality.

Dictum in the Idaho case of *State v. Bush*, 93 Idaho 538, 466 P.2d 578 (1970), acknowledges that ambiguities exist in the code provisions regarding alcohol. *Bush* reads Idaho Code § 23-1013 to prohibit the sale, serving, or dispensing of beer to a minor by a private person, whether pursuant to a commercial transaction or not. Justice McQuade, in a concurring opinion, expressed misgivings about the court’s holding vis-a-vis section 23-1023:

Prosecutions under Idaho Code § 23-1013 in situations not involving a commercial transaction may modify the safeguards afforded parents in Idaho Code § 23-1023. Parents and friends of parents may be prosecuted for serving minors beer in the privacy of their residences, despite the presence and permission of parents . . . We must look to the legislature to safeguard the citizens of Idaho from the jeopardy of a criminal conviction under Idaho Code § 23-1013 for “dispensing” beer to their children and their friends’ children in the privacy of their own homes. I call attention to that body to make its intention clear and unambiguous.

93 Idaho at 541.

In the fifteen years since *Bush*, the legislature has not seen fit to “make its intention clear and unambiguous” regarding the scope of Idaho Code § 23-1023’s private residence exception. Until the legislature takes such action, the citizens of Idaho must remain in “jeopardy of a criminal conviction . . . for ‘dispensing’ beer to their children and their friends’ children in the privacy of their own homes,” and the prosecutors of Idaho must remain in a quandary as to their duties in this delicate matter.

Sincerely,

JOHN J. McMAHON
Chief Deputy

JJM:lh

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

January 22, 1985

The Honorable Norma Dobler
State Senator, District 5
Statehouse
Boise, Idaho 83720

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Restrictive Covenants

Dear Senator Dobler:

You have asked whether a restrictive covenant among a group of landowners in a subdivision is enforceable in Idaho. According to your letter, the proposed restrictive covenant limits lot usage to:

... residential purposes and by a family of one (1) or more persons related by blood, marriage or adoption or a group of not more than six (6) persons not related by blood or marriage, living together as a single housekeeping unit.

In addition, it would exclude any:

... commercial establishment, hospital, sanitarium, place for institutional care or treatment of the sick or disabled, physically or mentally, or mobile home.

It is our opinion that a restrictive covenant of this nature may face insurmountable hurdles in the areas of property law, constitutional law and public policy and thus could prove unenforceable in Idaho.

ANALYSIS:

I. *Property Law Considerations*

As a general principle, restrictive covenants among property owners are enforceable in Idaho. *Ada County Highway Dist. v. Magwire*, 104 Idaho 656, 662 P.2d 237 (1983); *Twin Lakes Improvement Ass'n v. East Greenacres Irrigation Dist.*, 90 Idaho 281, 409 P.2d 390 (1965); *Payette Lakes Protection Ass'n v. Lake Reservoir Co.*, 68 Idaho 111, 189 P.2d 1009 (1948).

On the other hand, restrictive covenants are not favored because they act as a burden on the free use and alienability of property. Consequently, courts will construe such covenants narrowly. *Campbell v. Glacier Park Co.*, 381 F.Supp. 1243 (Id. 1974). Thus, if there are any defects in the creation of the covenant or any ambiguities in its wording it will not be enforced.

According to your letter, the proposed restrictive covenant will be an amendment to

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

the existing subdivision covenants. Such amendments are enforceable if the original covenants provide a mechanism for amendment. However, the amendment mechanism must be meticulously carried out: the required number of property owners must agree; the amendment must cover all of the lots covered by the original covenants; and the revised covenants must be properly recorded. Annot: "Validity, Construction and Effect of Contractual Provisions Regarding Future Revocation or Modification of Covenant Restricting Use of Real Property," 4 ALR3d 570 (1965). The *Idahonian* of December 8, 1984, indicates that not all property owners have agreed to the amendments. If that is so, the proposed covenant may not be enforceable. We do not have a copy of the original covenants to determine whether the conditions for amendment have been met.

The earliest court cases dealing with this subject have construed covenant language narrowly and have generally allowed group homes in residential neighborhoods. In *Costley v. Caromin House, Inc.*, 313 N.W.2d 21 (1981), the Minnesota Supreme Court summarized the reasons adopted by various courts for treating residents of a group home as a "family" when covenants permit only "single-family" dwellings:

From the outside, the home looks like all the other single-family homes in the neighborhood. The residents live in a family-type setting and call the dwelling their home. Courts in other jurisdictions have found similar group homes in compliance with single-family restrictive covenants. *State ex rel. Region II Child & Family Services, Inc. v. District Court of the Eighth Judicial District*, 609 P.2d 245 (Mont. 1980) (five retarded children; one unit single-family dwelling); *Bellarmine Hills Ass'n v. Residential Systems Co.*, 84 Mich.App. 554, 269 N.W.2d 673 (1978) (six retarded children; one single private family dwelling); *Berger v. State*, 71 N.J. 206, 364 A.2d 993 (1976) (eight to twelve multihandicapped children under age nine; one dwelling house). Factors considered by the courts include the single housekeeping structure, the relatively permanent type of living situation, and public policy supporting such living arrangements — all factors applicable to Caromin House.

313 N.W.2d at 27.

The Minnesota Supreme Court likewise held that the group home for retarded adults did not violate a covenant banning "commercial" usage simply because the home was compensated for its services. The court found support for this holding in *J.T. Hobby and Son, Inc. v. Family Homes of Wake County, Inc.*, 302 N.C. 64, 274 S.E.2d 174 (1981) (receipt of money by group home for four retarded adults does not violate covenant restricting use to residential purposes and one single-family dwelling); and *Crowley v. Knapp*, 94 Wis.2d 421, 288 N.W.2d 815 (1980) (for-profit group home for retarded adults complies with covenant restricting use to single-family dwelling used for residential purposes only). Only one case has been found where a covenant restricting use to "single family dwellings" has been enforced to ban group homes for mentally retarded adults. See *Omega Corp. of Chesterfield v. Malloy*, 319 S.E.2d 728 (Va. 1984).

In reading covenants to allow group homes within the definition of a "single family

dwelling,” courts frequently take their cues from state zoning statute language. As you note in your letter, the Idaho legislature has already decreed that a “single family dwelling” shall include “any home in which eight (8) or fewer unrelated mentally and/or physically handicapped persons reside,” and that such a home shall constitute a “residential use” for local zoning purposes. Idaho Code §§ 67-6530 through 67-6532. Thus, it seems likely that the proposed covenant restricting usage to “a single housekeeping unit” could not be interpreted to ban a group home. Furthermore, a court might conclude that a covenant restricting any “place or *institution* for care or treatment of the sick or disabled, physically or mentally” would be unenforceable in Idaho because such homes have been expressly designated by the legislature as “alternatives to institutionalization.” Idaho Code § 39-4604(h).

We assume, however, that you are not simply interested in whether loopholes can be found in a proposed covenant but whether *any* restrictive covenant attempting to ban group homes from residential neighborhoods could prove enforceable in Idaho. The remainder of this opinion addresses the broader question.

II. Constitutional Considerations

Two federal circuit courts have recently overturned local zoning ordinances that exclude from residential neighborhoods group homes for retarded adults or for former mental patients. In *Cleburne Living Center, Inc. v. City of Cleburne, Texas*, 726 F.2d 191 (1984), the Fifth Circuit held that mentally retarded persons are a “quasi-suspect” class because they have been “subjected to a history of unfair and often grotesque mistreatment; . . . subjected to ridicule . . . and derision; . . . relegated to a position of political powerlessness; . . . [whose] condition is immutable.” 726 F.2d at 196-198. As such, zoning ordinances that discriminate against this class must be subjected to “heightened scrutiny” because they “are more likely than others to reflect deep-seated prejudice rather than legislative rationality in pursuit of some legitimate objective.” *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 2394-95 n. 14, 72 L.Ed.2d 786 (1982). The Fifth Circuit concluded that a zoning ordinance excluding group homes for mentally retarded adults in an “apartment house district” was unconstitutional on its face as violating the Equal Protection Clause of the fourteenth amendment to the United States Constitution.

The Ninth Circuit reached a similar conclusion, under similarly heightened scrutiny, with regard to a zoning ordinance that discriminated against a group home for mentally retarded adults in a “residential” area. *J.W. v. City of Tacoma, Wash.*, 720 F.2d 1126 (1983).

Little purpose would be served by additional discussion of this question. The *Cleburne* case is now before the U.S. Supreme Court. If the Court holds that the mentally retarded form a “quasi-suspect” class and that zoning ordinances that discriminate against them violate the fourteenth amendment, then discriminatory restrictive covenants would likewise prove unenforceable. *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948).

It should be noted, however, that the converse need not be true. Even if the Supreme Court holds that the mentally retarded do not form a “quasi-suspect” class, lower

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

courts could still find that discriminatory zoning ordinances are unconstitutional because they do not serve any “rational” purpose at all. The State of Pennsylvania has urged the U.S. Supreme Court to adopt precisely such an approach — which is significant because Pennsylvania was the prevailing party in a recent Supreme Court case that deferred to the “reasonable” judgment of qualified professionals in dealing with care of mentally retarded patients involuntarily committed to a state institution. See *Youngberg v. Romeo*, 457 U.S. 307 (1982).

III. *Public Policy Considerations*

The final obstacle to enforcement of a restrictive covenant such as the one outlined in your letter is the fact that state courts, completely apart from constitutional considerations, have found such covenants unenforceable on public policy grounds. In doing so, some courts have relied upon declarations of legislative intent found in zoning statutes similar to the Idaho statutes you quote in your letter. Idaho Code §§ 67-6530 et seq.

It could be argued that these statutes, by their own terms, apply solely to zoning and other local ordinances and restrictions and have no persuasive value in determining public policy regarding private restrictive covenants. The Michigan Court of Appeals rejected this argument:

The fact that a zoning statute limits its declaration of policy to zoning does not lessen to any degree the policy of this state to protect and foster facilities for the mentally handicapped.

McMillan v. Iserman, 327 N.W.2d 559, 563 (Mich.App. 1983).

The New York Court of Appeals has recently held that a statute preventing discrimination against group homes by “local laws and ordinances” was a sufficiently clear indication of public policy to prevent discrimination by private restrictive covenants as well. In so doing, the court held that:

even if use of the property violates the restrictive covenant, that covenant cannot be equitably enforced because to do so would contravene a longstanding public policy favoring the establishment of such residences for the mentally disabled.

Crane Neck Ass’n v. N.Y. City/Long Island County Services Group et al., 472 N.Y.S.2d 901, 904 (1984).

The legislative policy in Idaho favoring deinstitutionalization and community living for retarded citizens is also clear. See Idaho Developmental Disabilities Services and Facilities Act, Idaho Code §§ 39-4601 et seq.; Respite Care Services Act, Idaho Code §§ 39-4701 et seq.; and Personal Care Services Act, Idaho Code §§ 39-A4701 et seq.

Finally, as the author of the leading article on this matter observes, the legislature “could relieve the courts from having to determine whether these restrictive cove-

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

nants violate public policy by enacting specific statutes.” Guernsey, “The Mentally Retarded and Private Restrictive Covenants,” 25 William and Mary Law Review, 421, 455 (1984). Four states (California, Indiana, North Carolina and Wisconsin) have adopted such statutes. The statutes routinely provide that the licensing process address such legitimate concerns as the size and outward appearance of the structure, the number of residents allowed in the group home and care to avoid a concentration of such units in a single neighborhood.

CONCLUSION:

Restrictive covenants limiting property use to a “single housekeeping unit” have been narrowly construed by the courts to permit group homes for the mentally retarded in residential neighborhoods. Similarly, a covenant banning any “place for institutional care” of the mentally retarded might not be construed to ban group homes — because the Idaho legislature has found that such homes are “alternatives to institutionalization.” Covenants that *expressly* aim to exclude such homes face severe constitutional problems even under the lowest level of court scrutiny. Finally, state courts that have addressed the question have found such covenants to be unenforceable on public policy grounds. Against this background, it is our opinion that a restrictive covenant banning group homes from residential neighborhoods would probably be unenforceable in Idaho.

Cordially,

JOHN J. McMAHON
Chief Deputy

JJM:cjm

February 2, 1985

The Honorable Mike Strasser
House of Representatives
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Representative Strasser:

The Attorney General has requested that I respond to your letter of January 22, 1985. Your letter poses two questions: (1) Is it possible for the state Liquor Dispensary of Idaho to break the lease referred to in your letter without becoming liable for the entire ten years’ financial commitment and (2) if the liquor dispensary wished to sublet the premises, could the consent of the lessor be unreasonably withheld? Our conclusion is that as the rights and responsibilities of a state under an ordinary business contract are, with few exceptions, the same as those of individuals, the state could remain liable for the remaining financial obligation of the lease. However, because

the drafters of the lease failed to define certain key terms, it is impossible to predict what liability a court would impose upon the state. Further, the state could sublet the demised premises and the consent of the lessor could not be unreasonably withheld.

It is axiomatic that the state has the authority to enter into contractual agreements. If the contract is not for an illegal purpose or in violation of any statutory or constitutional provision, the state remains obligated to perform its obligations under the contract. Under such circumstances, an individual contracting with the state is entitled to payment pursuant to the contract, *Aerial Service Corp. (Western) v. Benson*, 374 P.2d 277, 84 Idaho 416. Therefore, unless there was some particular exception or impediment to the performance of a contract, the state would remain liable for payment of the agreed consideration thereunder.

In analyzing this particular lease, a major problem becomes readily apparent: the lease agreement is not well drafted. The document does not define certain key understandings, such as a definition of what constitutes a breach of the agreement, what events constitute a default in the performance of the agreement or what might occur if by operation of law the lease became incapable of performance. This lack of specificity makes our analysis most difficult, as most drafters try to avoid problems of this nature by covering anticipated contingencies with specific language or general provisions as needed.

In reviewing this lease it is important to note this factor. The lease expressly provides that the premises can only be used for a state liquor store. If the legislature were to eliminate state liquor stores entirely, an argument could be advanced that the lease is no longer capable of being performed. However, it is extremely difficult to evaluate this argument because the lease in question contains no express provisions concerning what effect this possibility would have in relationship to the intent of the contracting parties. Because of this, we are unable to evaluate whether or not the lease could be breached without corresponding state liability.

In considering this matter, you may wish to explore other options which would mitigate any state liability. For example, if state liquor dispensaries were turned over to private industry, the new parties could be required to assume the state lease and hold the state harmless from any liability. There would be quite an incentive for private businessmen to do this as the location of state liquor dispensaries is well known to local customers. In short, the lease in question may or may not be enforceable; but if the intent of the legislature is to turn the liquor dispensary business over to private industry, other arrangements can be made to avoid the financial liability exposure to the state.

Concerning your second inquiry, the Idaho Supreme Court has recently ruled that the consent of the lessor may not be unreasonably withheld. If there is any further information we can provide, please advise.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

February 4, 1985

The Honorable Gail Bray
State Senator, District 19
Statehouse
Boise, Idaho 83720

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Proposed Day Care Licensing Act — House Bill 94

Dear Senator Bray:

You have requested our advice on matters pertaining to House Bill 94, the proposed Day Care Licensing Act. Specifically, your inquiry poses two questions:

- a) is there any issue of equal protection under the proposal, and
- b) will a county administered program have force and effect within the limits of incorporated cities?

Short Answer

- a) There appear to be no equal protection problems, so long as objective standards are followed except for the questions noted on section 31-4606(c) in the discussion that follows.
- b) As a general rule, county ordinances have no force and effect within municipalities. Thus, so long as the program is a county program, it will only affect the unincorporated areas of the county.

ANALYSIS:

- a) *Equal Protection*

Your first question asks whether HB 94 would deny equal protection of the laws in any manner.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Equal protection of the laws is guaranteed to all persons by virtue of section I of the fourteenth amendment, United States Constitution and article I, section 2, Idaho Constitution. In essence, the provisions stand for the proposition that all persons similarly situated shall be treated in a like manner. To treat persons differently who have the same status is to deny them equal protection of the law. However, reasonable classification of persons is not unlawful; only that which is discriminatory.

As an example, in the case of *Weller v. Hopper*, 85 Idaho 386, 392, 379 P.2d 792 (1963), the court considered a statute which prohibited known felons from ever renewing liquor licenses, but allow them to acquire new licenses five years after completion of their sentence. In holding the classifications to be a denial of equal protection, the court said:

... The classification, attempted to be set up by such statutory provision, is unreasonable, arbitrary and discriminatory; it attempts discrimination against one who happened to hold a retail liquor license at the time of his conviction of a felony, as against one who did not hold such a license at the time of his felony conviction; no reasonable ground or basis for such a distinction between them, as prospective licensees, exists.

85 Idaho at 392.

A review of HB 94 in light of the foregoing discussion reveals no equal protection problems except for the problems noted at (c) below.

Those problems may exist in section 31-4604(c) which allows the county commissioners to issue licenses, at their discretion, even when persons may fail to meet all the standards set forth in the bill.

b) *County/City Jurisdiction*

Your second question asks whether county licensing of day care centers/providers creates any jurisdictional conflicts with cities; i.e., would those licenses have any force and effect within incorporated municipalities?

Article XII, § 2, Idaho Constitution provides that:

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.

The section is considered to be a constitutional grant of power to cities and counties at least in the area of the police power. "*Home Rule For Idaho Cities*," 14 IDR 143 (1977).

The police power is the authority of government to regulate or prohibit conduct for the protection of the public health, safety, welfare or morals. *Winther v. Village of Weippe*, 91 Idaho 798, 430 P.2d 689 (1967). HB 94 purports to do just that by regulating day care.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

The Idaho Supreme Court has had numerous occasions to reflect upon the meaning of article XII, § 2, in relation to county jurisdiction within the limits of an incorporated city.

The first major case was *State v. Robbins*, 59 Idaho 279, 285, 81 P.2d 1078 (1938). There, the court opined that county ordinances were not “general laws” and, thus, had no application within cities. The defendant in the case had secured a license from the City of Moscow to purvey beer but had no county license. He was convicted of violating the county ordinance. In reversing, the court stated:

Since, therefore, a municipality is a distinct governmental entity, entirely independent of the county as such, and is, consequently, subject to no local legislation which it is within the power of the governing board of the county to enact, it is wholly immaterial whether or not the municipal authorities exercise or put into operative effect all the powers conferred upon it by its charter and the Constitution. The county, in brief, has no legal right to legislate for a municipality located within its limits upon any subject which is within the scope of the powers granted to the municipality, and particularly upon any matters involving the police power of the state . . .

59 Idaho at 285.

The same proposition has been reinforced in subsequent decisions of the supreme court. In *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 512 210 P.2d 798 (1949), the court prohibited the enforcement of a county ordinance within a city, even where the city had no conflicting enactment. In finding against the county, the court stated that:

. . . An attempt by the legislature to grant authority to a county to make police regulations effective within a municipality would be an infringement of such constitutional right of a municipality. A police regulation made by a county is not a general law for a municipality within the meaning of the constitution. *Ex parte Knight*, supra; *State v. Robbins*, supra. . . .

69 Idaho at 512. *See also Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977) (holding that county building permits are unnecessary and ineffective within a municipality).

Thus, county regulations and ordinances are ineffective and without force in duly organized Idaho cities. As the cases indicate, it makes no difference whether the county acts upon its own initiative or as a result of a legislative mandate; in either case, the result is the same.

Analogies can be drawn between HB 94 and other programs which may serve to better illustrate the foregoing legal principles. For example, title 67, chapter 65 of the Local Planning Act mandates the enactment of a comprehensive plan and zoning ordinances by counties. Exhaustive requirements are set forth which require county compliance. However, as a matter of law, county ordinances have no effect within

cities. *Brise City v. Blaser, supra*. Instead, the city must enact its own plan and ordinances in compliance with the general (state) laws.

The same holds true for the liquor laws and a host of other state mandated programs and regulations. Where local governments are given discretion to act, even severely limited discretion, their ordinances have no effect within a coequal jurisdiction.

The only circumstances where a county operated program would have force and effect within a city is where the county has absolutely no discretion, but merely acts as an agent for the state. An example of this would be the issuance of driver's licenses. In that circumstance, the county merely gives the test and collects the fee. The Department of Transportation exercises all discretion, such as license revocation.

In light of the foregoing, it is our opinion that any county ordinances adopted in response to HB 94, as proposed, will be without force and effect in cities.

c) Review of the Bill

As a courtesy, we have reviewed the proposed legislation, and have the following comments and suggestions:

Section 31-4601. The statement of policy clearly states that both cities and counties have jurisdiction to pass more stringent regulations. (lines 24 & 25) This should be deleted if local jurisdiction is not desired.

Section 31-4602. The definitions section fails to take into account "baby-sitters," i.e., the casual or occasional sitter who handles the children of more than one family for an evening out, etc.

Section 31-4604(1). The commissioners are given discretionary authority to establish the kind of information required for submission. This should be deleted or altered if local jurisdiction is not desired.

Section 31-4606. Same comment as Section 31-4604. In addition, reference should be made in sub-paragraph (3) to the name or description of Chapter 3, Title 66, Idaho Code.

Sub-paragraph (c) may present equal protection problems on the basis of insufficient standards for granting a license in spite of the absolute prohibition against such issuance. Furthermore, it is inconsistent to forever prohibit licensure on some basis and then allow it anyway at the government's discretion.

Section 31-4608. Again, discretion is allowed.

Section 39-1209. Parentheses should be used instead of periods if consistency of form is desired.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Section 39-1211. "DAY CARE HOMES AND DAY CARE CENTERS" should be deleted from the section title.

If you have further questions, please contact us.

Sincerely,

ROBIE G. RUSSELL
Deputy Attorney General
Chief, Local Government Division

RGR:cjm

February 4, 1985

The Honorable Christopher R. Hooper
Idaho State Representative
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Proposed Daycare Licensing Acts — House Bills 94 and 95

Dear Representative Hooper:

As I indicated to you at the committee hearing on February 4, 1985, our office would be providing written comments concerning the above-referenced bills. I am enclosing for the review of your committee an informal guideline provided to Senator Gail Bray concerning House Bill 94 and a written analysis of House Bill 95.

In part C of the analysis provided to Senator Bray, deputy attorney general Robie Russell correctly points out certain changes that would be necessary in order to comply with decisions of the Idaho Supreme Court. See for example *Benewah County Cattlemen's Association, Inc. v. Board of Commissioners of Benewah County*, 105 Idaho 209, 668 P.2d 85 (1983), and *Hobbs v. Abrahams*, 104 Idaho 205, 657 P.2d 1073. The basic problem identified by Mr. Russell is that House Bill 94 provides for too much discretion to local county commissioners. This defeats the requirement of article XII, § 2, of the Idaho Constitution of being a true state mandated program which exists, for example, with driver's licenses.

The other approach I mentioned to your committee in relationship to House Bill 94 would be to create a state mandated program administered by cities and counties. I have attached for your committee's review handwritten modifications to House Bill 94 which would accomplish this purpose. If there is anything further we can provide, please feel free to call upon us.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

February 11, 1985

The Honorable Walter E. Little
Representative, District 10
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Resort Cities Tax — Curative Legislation

Dear Representative Little:

In September of 1983, The Sun Valley Company initiated litigation against the City of Sun Valley seeking a determination that the city ordinances promulgated under the "City Property Tax Alternatives Act of 1978," Idaho Code § 50-1043, et seq., were invalid and that the authorizing statutes were unconstitutional. The scope of the litigation later expanded to include similar ordinances enacted by the City of Ketchum. While the litigation was in process, the Idaho Supreme Court decided a significant case dealing with the issues raised by the Sun Valley and Ketchum litigation. In *Greater Boise Auditorium District v. Royal Inn of Boise*, 106 Idaho 884, 684 P.2d 286 (1984), the Idaho Supreme Court upheld the constitutionality of legislation authorizing auditorium districts to impose a sales tax on receipts derived from furnishing hotel and motel rooms. In so holding, the supreme court resolved some of the ambiguities and problems which have plagued this area since *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923). The supreme court read *State v. Nelson* as forbidding the delegation of unrestricted and unguided taxing power to municipal entities. However, the court rejected the former interpretation of *State v. Nelson* which allowed the legislature to delegate only the power to levy ad valorem taxes to municipal entities. Judge Granata relied heavily on the *Greater Boise Auditorium District* rationale when he held the City Property Tax Alternatives Act of 1978 was unconstitutional as an over-broad delegation of the legislative power to levy taxes. Curative legislation has now been proposed to meet the judge's objections. We have been asked to discuss some of the issues raised by this curative legislation.

I. *Proposed Curative Legislation.*

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

We have been provided with House Bill No. 73, which is the text of the curative legislation. It consists of approximately five single-spaced pages of legislative material. Accordingly, we will cite only to the significant portions of the statute in discussing the particular issues raised by your request.

- (i) In general, the legislation allows resort city residents and city governments to act in concert to impose any combination of three authorized sales taxes. The qualifying condition for a resort city is that the local governing body pass an ordinance which shall contain finding of facts that:
 - (a) The city derives a major portion of its economic well-being from businesses catering to recreational needs and from meeting the needs of people traveling to that destination city for an extended period of time, and
 - (b) The city has a tourist population which exceeds the residence population of the city during at least 14 days in any calendar year.
- (ii) If the city government passes an ordinance to assess the tax and the electorate approves by a 60% majority of all votes cast on the question, then the city may levy any or all of the three specified sales taxes.
- (iii) The statute also provides limitations on the manner of the election, the purposes for which the tax-generated funds may be expended, sets out requirements of cooperation with county local option and nonproperty sales taxes, and provides mechanisms for collections and administration of the sales taxes. The various sales taxes are limited to 5% in amount on each of the areas subject to taxation and to a total of 5% on any single sales transaction.

Taken together, these limitations should pass constitutional muster. In the *Boise Greater Auditorium District* case, the Idaho Supreme Court upheld the sales tax which auditorium districts were authorized to impose under Idaho Code §§ 67-4917A through 67-4917C. The court noted that those statutes specifically defined the incidence of the tax, set forth the applicable exemptions, set a maximum amount which may be imposed, and delineated the administration and collection of the tax through incorporation of the Idaho Sales Tax Act.

A. *Incidence of the Tax.*

The proposed curative legislation specifically defines the incidence of the tax. It allows the resort city to impose any of three specifically defined taxes. The first is an occupancy sales tax on receipts derived from sleeping accommodations. The second is a sales tax on receipts derived from the sale of liquor by-the-drink, wine, and beer sold at retail for consumption on the premises. The third is a general retail sales tax on receipts derived on sales subject to the Idaho Sales Tax Act. The resort city may adopt any one or more of the authorized alternatives. While this delegation is somewhat broader than that represented in the *Greater Boise Auditorium District* case, it still meets the requirement that the enabling statute define the incidence of taxation. The legislation permits the imposition of three distinct taxes, each of which individually meet the

stringent requirements of the *Greater Boise Auditorium District* case. Since the legislation limits the tax imposed on any one sale to a 5% tax and each of the separate taxes would be valid if standing alone, it would be illogical to say that the combination is improper.

B. *Maximum Amount of Tax.*

As noted above, the individual options and the overall rate are limited in amount to a 5% maximum. This explicitly meets the standard set forth in *Greater Boise Auditorium District*.

C. *Administration and Collection.*

The curative legislation also incorporates the Idaho Sales Tax Act in administration and collections provisions to the same extent as that approved in *Greater Boise Auditorium District*. While this specific mechanism was approved in *Greater Boise Auditorium District*, both statutes lack a mechanism for providing due process in the adjudication of disputed tax liabilities. A simple inclusion of a reference to the administrative procedures in the Idaho Sales Tax Act is suggested as a prudent amendment to the legislation or a prudent inclusion in the municipal ordinance authorizing the taxation.

D. *Exemptions.*

The curative legislation is at least as explicit defining exemptions to the authorized tax as was the legislation at issue in the *Greater Boise Auditorium District* case.

Since there is no indication in the *Greater Boise Auditorium District* case that it represents the minimum standard and the protections provided in the proposed curative legislation are at least as good as those represented in *Greater Boise Auditorium District*, the proposed curative legislation is constitutional.

II. *Other Issues Raised by the Curative Legislation.*

A. *Tourist Population.*

The definition of resort cities has raised some questions regarding the determination of tourist population. We see no constitutional problem with such a determination. The tax law has long dealt with the issues of residence, domicile, situs and nexus. While a particular person's status with respect to each of these issues is subject to determination on a case-by-case basis, such terms have never been held too vague or indefinite so as to invalidate authorizing legislation.

The indefiniteness of the "tourist population" term here is mitigated by two circumstances. The first is that it's subject to a reasonable determination by the resort city government when it makes its findings of fact regarding its status as a resort city. Reasonable administrative determinations of status ques-

tions arising under taxing statutes have long been upheld. Secondly, the contrast with “resident population” clearly indicates that the tourists who are to be counted are those who are spending the night in the city limits of the proposed resort city.

B. *Campgrounds.*

A second question has been raised because the option on hotel and motel rooms does not also extend to campgrounds and parking facilities for recreational vehicles. The *Greater Boise Auditorium District* case answers this question. The sales tax there did not extend to the campgrounds or parking facilities and was nevertheless upheld. This omission causes no constitutional problem.

C. *14-Day Rule and Off Premises Sales.*

Two other questions regarding discrimination have arisen: (1) whether resort cities and, specifically, only those resort cities which have a tourist population exceeding the resident population during at least 14 days, can be made the subject of the curative legislation; and (2) whether it's discriminatory to tax only the alcoholic beverages sold for consumption on the premises as opposed to the same products sold for consumption off the premises. The standard by which such discrimination arguments are to be judged is that there must be some rational relationship between the legitimate purpose of the statute and the method the statute uses in establishing various categories. Put another way, the person attacking the constitutionality of the statute must negate every possible rational explanation for the legislative classification. See *School District No. 25 v. State Tax Commission*, 101 Idaho 283, 612 P.2d 126 (1980), and *Sheppard v. State Department of Employment*, 103 Idaho 501, 650 P.2d 643 (1982).

It is clearly rational for the legislature to determine that resort cities face greater demands on their city services compared to their ad valorem tax base than nonresort cities, and provide accordingly. The proper analysis then ascertains if it is rational for the legislature to determine that the resort cities most likely to be affected by these excessive demands for services are those where the tourist population exceeds the resident population for at least 14 days in any calendar year. Since a tourist population exceeding resident population is a measure of the demand on the city services and the 14-day period is a qualification related to the duration of that demand, the overall limitation is rational and should be upheld. It is not a proper analysis to question legislative motives in drawing the line at 14 as opposed to 12 or 16 days if the 14 days is a rational measure of demands for city services. It clearly is, and should be upheld.

Opponents of the bill question whether the requirement that the resort city make a finding of fact based on evidence presented to it or by it that it qualifies as a resort city is a sufficient limitation. Even though there are no due process standards stated in the statute, the Idaho Supreme Court has never hesitated to imply such standards where quasi-judicial fact-finding is undertaken by a

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

municipal entity. See *Cooper v. Board of County Commissioners of Ada County*, 101 Idaho 407, 614 P.2d 947 (1980).

D. *Delegation of Taxing Authority.*

There is a question regarding the delegation of the general sales tax power to the cities which authorizes them to tax all or any portion of the transaction under the Idaho Sales Tax Act. Thus, the cities have the power to pick certain sales transactions as being subject to their general sales tax. The outside limits are the sales transactions taxable under the Idaho Sales Tax Act. This limited discretion on the part of the cities is probably valid for the same reasons that providing multiple options for the cities to choose from is valid. The legislature has limited the outside bounds of the cities' discretion. Within those limits, the legislature could certainly delegate the choice of several different taxing schemes to the resort cities. The sum of all such delegations should meet the constitutional limitations, provided that each delegation meets the standards set forth in the *Greater Boise Auditorium District* case. Even if a court took issue with the city's actions, at most, the exemptions from sales taxable under the Idaho Sales Tax Act might be invalidated. However, this is clearly not such a broad delegation as would invalidate the enabling statutes. As stated above, the enabling statutes meet the requisites of the *Greater Boise Auditorium District* case.

III. *Validation and Retroactive Application.*

The curative statute, by its terms, ratifies, confirms and approves any tax imposed by a resort city under the sections of the Idaho Code which were held to be unconstitutional. The ratification and approval relates back to November 28, 1984. Such a validation and confirmation is probably permissible. In *3 Sutherland, Statutory Construction*, § 41.17, page 303, is stated:

In most jurisdictions, however, it seems settled that by subsequent act, the legislature may ratify unauthorized taxes, and give them retroactive validity. Defective tax assessments may be validated. (cites omitted)

The district court held Idaho Code §§ 50-1043 through 59-1049 to be unconstitutional as an overly broad delegation of legislative power. Where the legislature later upholds the delegation and ratifies the taxes imposed thereunder, the legislative enactment should be honored.

Although the statute purports to be retroactive to November 26, 1984, it does not appear that the legislature intends to authorize resort cities to enact a tax which dates back to November 28, 1984. Rather, the intent appears to be to ratify those taxes which were put into effect on or after November 28, 1984. Because of the nature of the sales tax, it is doubtful that the courts would uphold retroactive imposition of a new sales tax. Thus, while the legislature can remedy the defects found by the district court and ratify the existing taxes, it probably cannot authorize the resort cities to now enact a new tax with retroactive application to November 28, 1984.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

If we can be of any further assistance, please contact us.

Sincerely,

ROBIE G. RUSSELL
Deputy Attorney General
Chief, Local Government Division

C. A. DAW
Deputy Attorney General
Idaho State Tax Commission

RGR/CAD:jas

February 12, 1985

The Honorable Dean Sorensen
Idaho House of Representatives
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: House Bill 65

Dear Representative Sorensen:

You have requested our review of House Bill 65 to determine whether or not the term "public place" as defined by the proposed Clean Indoor Air Act includes private offices. It is our conclusion that the bill as drafted was not intended to apply to private offices. Nevertheless, it may be advisable to amend the definition of "public place" to specifically exclude private offices.

The term "public place" has been interpreted by many courts on numerous occasions. Generally, the courts have indicated that "public place" means an enclosure, room or building considered as one in which, by public invitation, members of the public attend for reasons of business, entertainment, instruction or the like and are welcome as long as they conform to what is customarily done there. See *People ex rel. Cheever v. Harding*, 72 N.W. 2d 33, 35 343 Mich. 41; *Nelson v. City of Natchez*, 19 So.2d 747, 197 Miss. 26. The term "public" as applied to "place," is not an absolute, but a relative term and is used in contradiction to the term "private." *State v. Sowers*, 52 Ind. 311, 312; *State v. Waggoner*, 52 Ind. 481; *Cahoon v. Coe*, 57 N.H. 556, 595 cited and approved in *Territory v. Lennon*, 22 P. 495, 9 Mont. 1. "Public place" is, generally speaking, a place openly and notoriously public, a place of common resort; a place where all persons have the right to go and be; a place which is in point of fact public, as distinguished from private; a place that is visited by many persons and usually accessible to the neighboring public; every place which is for the time made

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

public by the assemblage of people. *People v. Whitman*, 165 N.Y.S. 148, 149, 178 App. Div. 193. A place may be public during some hours during the day and private during other hours. *Gomprecht v. State*, 37 S.W. 2d 734, 735, Tex.Crim.Rptr. 434; *Parker v. State*, 26 Tex. 204, 207.

Specific cases dealing with the definition of the term “public place” have generally dealt with gambling matters, indecent exposure or drunk in public charges, and the requirement that notices must be published in public places. Cases dealing with offices have found that lawyers’ offices (*Burdine v. State*, 25 Ala. 60, 63, *Parker v. State*, 26 Texas 204, 207) and physicians’ offices (*Sherwood v. State*, 25 Ala. 78, 79) are not “public places” in relationship to the enforcement of gambling laws, while hotel offices are. See *Goodwin v. Georgian Hotel Company*, 84 P.2d 681, 684, 197 Wash. 173. In short, the term “public place” means a place which in point of fact is public, as distinguished from private, but not necessarily a place devoted solely to uses of the public. *State v. King*, 151 S.E. 2d 566, 567, 268 N.C. 711.

It is our conclusion therefore that the term “public place” as used in the statute would probably not apply to a private office. Nevertheless, the following language could be added to clarify this point:

Public place shall not include a private enclosed office occupied singly or jointly by less than (insert number) employees.

I hope this analysis is useful. If there is anything further I can provide, please do not hesitate to call upon me.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

February 19, 1985

The Honorable At Parry
Idaho State Senate
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Personnel Commission Reclassifications

Dear Senator Parry:

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

The questions drafted by Ray Stark, which accompany your letter to Attorney General Jim Jones, ask when an agency incurs the obligation to adjust an employee's salary after an upward or downward reclassification, and whether an agency would be subject to a grievance for failure to pay a salary increase after an upward reclassification.

The short answer is that salaries are adjusted at the time a reclassification takes effect. In practice, an employee subject to a downward reclassification will not experience a salary decrease because the employee has salary protection up to step G of the new classification's pay grade. An employee whose position is reclassified upward can bring a grievance if the agency does not grant a corresponding pay increase; in practice, this situation does not arise.

ANALYSIS:

Mr. Stark's memo refers to "conflicting testimony on the results of reclassifications performed by the Personnel Commission." According to the memo, agencies say that any resulting salary increase is effective immediately, whereas the Personnel Commission says the increase does not take effect until the next budget year.

Perhaps the conflict derives from the distinction between a "reclassification" and a "reallocation." A "reclassification" means a change of *position* from one class to another. This occurs whenever the Idaho Personnel Commission determines that the domain and responsibilities of a particular job have changed so significantly that a new classification more properly characterizes that job. When a position is reclassified upward, it results in that position being paid at the higher pay grade, usually a 5% salary increase (e.g., Records Clerk, pay grade 19, upwardly reclassified to an Automated Records Clerk, pay grade 20). The agency pays the increased salary upon receiving word of the reclassification from the Idaho Personnel Commission.

In theory, a downward reclassification also results in an immediate salary adjustment. In practice, however, this rarely happens because the employee subject to a downward reclassification has salary protection up to step G (step G is the last step of a pay grade) of the new pay grade. For example, a former Accounting Technician, pay grade 25, step C, receiving \$7.58 an hour, is reclassified downward to an Account Clerk, pay grade 22, but continues to receive \$7.58 an hour, by being positioned at step F of pay grade 22. In the above example, if the former Accounting Technician had been receiving \$8.36 an hour at step E of pay grade 25, that employee would receive only \$7.96 an hour as an Account Clerk at step G of pay grade 25 (because the salary protection extends only to step G of the new pay grade).

"Reallocations" mean a change of a *class* from one pay grade to any other pay grade. Procedurally, the Idaho Personnel Commission does a study of a class to determine if the responsibilities of the entire class group have changed. If the responsibilities have changed substantially, the class itself is refactored pursuant to the Hay methodology. Such refactoring results in a higher or lower pay grade for the particular class. The refactoring must be submitted by the Personnel Commission to the Governor and the Legislature by October 1 for approval, effective the following July 1. The Personnel Commission forecasts resulting salary changes for the Division of

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Financial Management, which then attempts to place money in the departments' budgets for reallocations.

No salary adjustments for upward reallocation are made until the beginning of the new fiscal year. Downward reallocations, like downward reclassifications, are generally subject to salary protection up to step G of the new pay grade.

Finally, a department may be grieved if it does not pay salary increases due under an upward reclassification or reallocation. The grievant would argue that failure to fund such a salary increase creates an inequity within the department or agency, grievable under Idaho Code § 67-5309A(1).

Such a situation, however, would not occur in the real world. Most reclassifications or reallocations occur at the request of a department. The requesting department would not ask the Personnel Commission for a study unless it had the money to fund an upward reclassification or felt that money would be forthcoming in the following fiscal year to fund a reallocation. Under either scenario, it is unlikely that an upward reclassification or reallocation would ever result in a grievance.

If you require further assistance, please contact me.

Sincerely,

JOHN J. McMAHON
Chief Deputy

JJM:lh

ANALYSIS BY:

JIM RAEON
Deputy Attorney General

February 21, 1985

The Honorable Norma Dobler
Idaho State Senator
STATEHOUSE MAIL

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: House Bill 120

Dear Senator Dobler:

You have asked the Attorney General for an opinion regarding House Bill 120.

That bill is apparently intended to overturn the recent Idaho Supreme Court decision in *Blake v. Cruz*, in which the court recognized a cause of action for “wrongful birth.”

Three states have adopted similar statutes. In 1981, South Dakota adopted a statute barring causes of action based on “wrongful life,” i.e., a claim by the child that, but for the negligence of another, he “would not have been permitted to have been born alive.” The South Dakota statute likewise barred so-called “wrongful birth” causes of action, i.e., claims brought by another (usually the parent of a handicapped child) alleging that, but for the negligence of another, the child would not have been born alive.

The Minnesota legislature enacted similar measures in 1982. Like South Dakota, its law forbids both “wrongful life” and “wrongful birth” claims. (In Idaho, there has been no impetus to bar “wrongful life” claims because the Idaho Supreme Court itself rejected this cause of action in its opinion in *Blake v. Cruz*.)

Finally, in 1983, the Utah legislature enacted a “right to life” bill as chapter 167 of its session laws. The law states that:

A cause of action shall not arise, and damages shall not be awarded, on behalf of any person, on the claim that but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted.

It is this language that has been incorporated into House Bill 120.

In denying a cause of action for “wrongful life” or “wrongful birth,” state legislatures rely on broad power to define or otherwise limit tort liability. For example, in Idaho, the legislature has structured the state’s entire tort liability system around the concept of comparative negligence. Idaho Code § 6-801, et seq. Further, the Idaho legislature has frequently seen fit to limit various causes of action. See Idaho Code § 25-2119 (owners of animals on “open range” not liable for accidents occurring on highways between animals and motor vehicles); Idaho Code § 49-763 (failure to use child safety seats not admissible as evidence of contributory negligence); Idaho Code § 49-1401 (guest statute governing liability between car owners and their passengers). In addition, the legislature has taken the entire matter of industrial accidents out of the court system by its workers’ compensation statute. Idaho Code §§ 72-201, et seq. Thus, there is ample precedent for legislative involvement in this arena.

Our research on the question of “wrongful birth” statutes reveals that, to date, no state or federal court has ruled on any of the statutes enacted by South Dakota, Minnesota or Utah. No challenges have reached an appellate court. A single suit, in Minnesota, was settled and dismissed. The offices of the Attorneys General in the three states inform us that there are no known challenges pending at any level of their state court systems.

Regarding your precise concern as to whether the language in House Bill 120 may be overly “broad” or unconstitutionally “vague,” our research has uncovered only one article on point. This article is contained in the annual “Utah Legislative Survey,” in

the Winter, 1984, issue of the *Utah Law Review*. It is pertinent because, as mentioned earlier, House Bill 120 is taken verbatim from the Utah statute. The author notes that the intent of the Utah legislature in passing its “wrongful life” and “wrongful birth” statutes was “to prevent abortions by curbing the perceived trend towards genetic counseling performed routinely.” The link was seen as follows:

Routinely performed genetic testing supposedly encourages abortions by informing parents of their unborn child’s defects. Thus, to discourage such testing, the legislature passed legislation that purportedly removes malpractice liability due to a physician’s failure to perform genetic tests routinely.

1984 Utah Law Review at 224.

The goal is probably the same in Idaho. The fact situation which gave rise to a “wrongful birth” claim in *Blake v. Cruz* was the failure of the physician to test for rubella at the time the mother’s symptoms were present.

The author of the Utah law review article notes that the language adopted by the Utah legislature (and proposed in House Bill 120) may not perfectly carry out the sponsors’ desired intent because it hinges on the question of whether the child “would have been aborted.” But:

a woman has a right to make a fully informed procreative choice, and courts have held that when negligent counseling interferes with that right a woman is entitled to damages, *irrespective of whether she would have had an abortion*.

Id. See *Berman v. Allan*, 404 A.2d 8 (1979). (Emphasis added.)

Indeed, a cause of action for “wrongful birth” due to negligent counseling was held to exist even in a situation where abortion itself was not available as a legal option. See *Jacobs v. Theimer*, 519 S.W.2d 846, 848 (Tex. 1975).

Thus, in response to your inquiry regarding the possible over-breadth of House Bill 120, it appears that certain fact patterns might elude the intended prohibitions. For the most part, however, the bill is drafted in a way that would succeed in overturning the Idaho Supreme Court decision in *Blake v. Cruz*. Nor do we discern any problems in the bill on the score of “vagueness.”

CONCLUSION:

House Bill 120 bars a cause of action for “wrongful birth.” It thereby seeks to overturn the Idaho Supreme Court decision in *Blake v. Cruz*. In general, the bill succeeds in this endeavor, though there may be fact patterns that slip through the cracks because of the bill’s exclusive emphasis on the “abortion” context. The language of the bill, in our opinion, could not be challenged on the ground that its language was unconstitutionally “broad” or void for vagueness.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

None of the three parallel laws enacted by other states have been challenged at the appellate court level as to their constitutionality, nor are any such challenges now pending.

Sincerely,

JIM JONES
Attorney General

JTJ/JMJ:lh

February 26, 1985

The Honorable Lydia Edwards
House of Representatives
State of Idaho
STATEHOUSE MAIL

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: House Bill 120

Dear Representative Edwards:

You have asked the Office of the Attorney General for an opinion regarding the constitutionality of House Bill 228. That bill makes it a misdemeanor to "use, possess, operate, keep, sell, or maintain for use or operation or otherwise, anywhere within the state of Idaho, any slot machine of any sort or kind whatsoever." The bill creates an exception in the case of "antique slot machines," i.e., exclusively mechanical (non-electronic) machines manufactured prior to 1950 "for purposes of display only and not for operation."

It is our opinion that H.B. 228 would be a constitutional exercise of power by the Idaho Legislature.

The Constitution of the State of Idaho provides, in article III, section 20, that, "The legislature shall not authorize any lottery or gift enterprise under any pretense or for any purpose whatever." Chapter 38 of the Criminal Code (title 18) defines gambling as a misdemeanor and directs judges to issue warrants to seize and destroy gaming tables and other gaming devices.

The Idaho Supreme Court has held that an attempt by the legislature in 1947 to legalize slot machines was unconstitutional. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953). The court in that opinion held that slot machines were "lotteries" and that they could be "used for no purpose except to violate the law." *Id.* at 527. The court relied on an earlier decision which had held:

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

that the only possible value they [slot machines] can have is for use in violating the penal statutes of this state; that in order to be valuable and command any price in the market, it is necessary that they be used in the commission of crime.

Mullen & Co. v. Moseley, 13 Idaho 457, 464 (1907).

In more recent decisions, the Idaho Supreme Court has backed away from holding that ownership of slot machines is criminal per se. In *State v. Johnson*, 77 Idaho 1, 287 P.2d 425 (1955), the court interpreted the *Garden City* case as standing for the proposition that “it is the use of the devices which violates the law.” Id. at 10 (emphasis in original).

Finally, in *Prendergast v. Dwyer*, 88 Idaho 278, 398 P.2d 637 (1965), the court faced a challenge to the seizure of gaming devices by a defendant who claimed they were not, in fact, used for gambling purposes. The court there distinguished between:

whether the device is malum in se and therefore contraband or whether it is capable of legitimate use . . .

Id. at 286.

The court held that it was unconstitutional to seize and destroy the property in question once the defendant had raised the defense that the gaming device was not one used for gambling.

Thus, the Idaho Supreme Court has chosen not to join those states that hold it is criminal per se to possess a gaming device (slot machine), regardless of whether it is in operation or even whether it is operable at all. See, for example, *In the Destruction of One Gambling Device*, 16 Wash.App. 859, 559 P.2d 1003 (1977).

It follows that the Idaho Legislature would be free to enact legislation criminalizing the use of slot machines but authorizing ownership of “antique slot machines” for the sole purpose “of display only and not for operation.” It should be noted, however, that it is already criminal in Idaho to use or operate gaming devices and it is already legal to possess such devices if one does not intend to use them for gambling purposes. House Bill 228 would only be making this more clear.

Indeed, H.B. 228 would actually cut back on existing rights because it would criminalize “for use or operation or otherwise, anywhere within the state of Idaho, any slot machine of any sort or kind whatsoever.” At present, Idaho law makes it illegal to use or operate or provide such devices for gambling purposes, but it would be a good defense to show that the machines were used otherwise. It would also be a good defense to show that the machine was inoperable (unless one were providing parts for gambling purposes). H.B. 228 would take away both of these defenses, thereby criminalizing conduct now legal in Idaho.

If you have any further questions in this matter, please contact me.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Sincerely,

JOHN J. McMAHON
Chief Deputy

JJM:lh

February 26, 1985

The Honorable Pamela I. Bengson
Idaho House of Representatives
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Senate Bill 1105

Dear Representative Bengson:

You have requested legal guidance concerning the meaning of the phrase "state candidate" in Senate Bill 1105. Specifically you request guidance as to which state elected officials would be included within the meaning of "state candidate" as proposed in § 34-707A. Our conclusion is that a "state candidate" as proposed includes only candidates for state-wide political office and does not include "district candidates" such as those seeking election to the Idaho Legislature.

Chapter 7 of title 34 distinguishes between candidates for district and state office. For example, in Idaho Code § 34-705 it is provided that "all candidates for *district*, *state*, and *federal* offices shall file their declaration of candidacy with the Secretary of State." (emphasis added) In Idaho Code § 34-706 a distinction is drawn between "legislative candidates" and "candidates who have filed for federal and state offices." Therefore, within the context of chapter 7 of title 34 "state candidates" are those candidates who run for state-wide office and who would be selected by the state central committee in the event of a vacancy, as opposed to the legislative district central committee in cases of a legislative vacancy. See Idaho Code § 34-715.

Further our interpretation of the phrase "state candidate" is consistent with the practice of the Idaho Secretary of State's office and with their interpretation and application of the law. As you know, administrative interpretations of the law by the agency entrusted with their enforcement is entitled to considerable weight. See *State of Idaho v. Kleppe*, 417 F.Supp 873 (D.C. Idaho 1973). In summary it would appear that "state candidates" as used in S.B. 1105 would apply only to candidates for a state-wide office. If there is anything further we can provide, please advise.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

March 4, 1985

Chief James E. Montgomery
Boise City Police Department
7200 Barrister Drive
Boise, ID 83704

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Handicap Parking

Dear Chief Montgomery:

You have asked for legal guidance on two related questions: First, whether it is optional or mandatory for police officers to enforce handicap parking privileges; and, second, whether the officers may issue a summons by ticketing the illegally parked vehicle rather than personally citing the individual who parks the vehicle.

Handicap parking privileges may apply to parking in public parking areas as well as to parking on property which, though privately owned, is open to the public for vehicular travel. With regard to the former, there is a clear duty on the part of law enforcement officers to enforce all provisions of state law, including infraction provisions for interfering with handicapped parking privileges. Idaho Code §§ 50-209, 31-2202(2).

With regard to parking on private property open to the public, Idaho Code § 49-594 provides that the owner of real property which is open to vehicular travel by the public may require other, different, or additional conditions for motorists' use of the property than those provisions enumerated in state laws. In the words of the statute, nothing prohibits the owner of such real property from "otherwise regulating such use as may seem best to such owner." Idaho Code § 49-594. In keeping with this policy expression, Idaho Code § 49-698 allows, but does not require private property owners whose property is open to public use to designate parking zones and spaces for the handicapped.

Subsection 2 of Idaho Code § 44-698 makes it an infraction offense to park in spaces designated for the handicapped; because it relates back to Subsection 1, the prohibition applies whether the parking infraction occurs on public property or on private property open to public use where the landowner has designated handicapped

parking spaces. Subsection 5 states that “law enforcement officials are empowered to enter upon private property open to public use to enforce the provisions of this section.”

The essence of the first question you ask is whether the phrase *empowering* officers to enforce handicap parking designations on private property thereby creates a duty on the part of law enforcement officers to enforce such provisions. Resolution of this question can only be reached by ascertaining the intent of Idaho Code § 49-698(5) and giving effect to that intent. Grammatically, the statute expresses in the indicative rather than the imperative mood the role of officers in enforcing parking provisions on private land. Because the statute does not say that officers *shall* enter upon private property to enforce handicap parking, it could be argued that though an owner of real property may have provided parking spaces for the handicapped, he may not want city police officers entering upon the property and writing citations. Thus, Idaho Code § 49-594 might be used to advance the argument that an owner could seek from users of his property compliance with handicapped parking designations in some manner other than through police citations. But this view is not persuasive; if a land owner does not want police enforcement of handicap parking, he simply need not make the statutory designations for the handicapped.

The grant of power to law enforcement officers to enforce handicapped parking was not intended to give officers a choice whether or not to enforce the law but to make it clear that though handicapped designations might be on private rather than public property, police officers may use their powers to enforce such regulatory provisions once the landowner has designated the handicapped parking area. We hasten to add, however, that nothing in this construction limits the discretion with which law enforcement officers approach their duties to enforce the law. The discretion which bounds their enforcement of parking provisions is the same as that which is inherent in such executive officers generally.

The second question which you have asked is whether police officers may issue a summons to the owner of an illegally parked car simply by ticketing the vehicle, or whether the officers must personally serve a citation upon the person whom they observe operating and parking the vehicle in contravention of the handicap provisions.

Traditionally, parking violations have led to a misdemeanor complaint enforced through the criminal process. Service of the complaint is made by attaching the parking citation to the car since it is presumed that the owner thereof is the offender. Challenges have been made to this mode of criminal enforcement because there usually is no proof as to *who* illegally parked the car. It is elementary, of course, that criminal sanctions operate *in personam*, against individual offenders and that proof of the identity of the offender is a jurisdictional element of criminal offenses.

While an infraction is not a criminal offense, but rather a “public civil offense,” Idaho Code § 18-111, infractions are, nevertheless, enforced in much the same way that criminal offenses have traditionally been enforced — that is, by the issuance of a citation to the offender. (See, generally, Idaho Infraction Rule 5.)

Idaho’s parking laws, like those of most states, are drafted to impose liability upon

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

the person committing the infraction. That the citation must accuse the violator and not the offending vehicle is clear from Idaho Code § 49-3402 which deals with the issuance of an infraction citation. It provides:

It is unlawful and an infraction for *any person* to do any act forbidden, or fail to perform any act required by the provisions of Chapters 5, 6, 7, and 8, Title 49, Idaho Code.

Similarly, Idaho Code § 49-3406 sets out the penalties for violating an infraction statute. Subparagraph (1) says: "It is an infraction for *any person* to violate any of the provisions of Chapters 5, 6, 7, or 8, Title 49, Idaho Code," and then provides the punishment. Subparagraph (2) says: "It is an infraction for *any person* to violate any county, city, or other local ordinance" and then provides the punishment.

Subparagraph (2) of Idaho Code § 49-3402, however, contains the answer to the question which you pose. It provides that:

A peace officer may issue an Idaho Uniform Citation for any infraction specified in the provisions of Chapters 5, 6, 7, and 8, Title 49, Idaho Code, in which he shall certify that he *has reasonable grounds to believe and does believe, that the person cited committed the infraction* contrary to law. (emphasis supplied)

For the issuance of a citation the code requires only that the police officer have "reasonable grounds" to believe that the person cited committed the parking violation. It is reasonable to believe that the registered owner of the car is the person who illegally parked it and, thus, a citation may properly be issued to the owner of the car. This procedure not only accords with the statute, but complies with Idaho Infraction Rule 5(a).

Idaho Infraction Rule 5(c) permits service by allowing the defendant to sign the citation promising to appear or by "personal delivery" to him where he fails or refuses to sign the citation. Recently, the Colorado Supreme Court has upheld service by attachment of the citation to a parked vehicle where that state's rule spoke of "personal service" but did not specifically address leaving of the citation on the car. "Although the method of service as seen here is not specifically sanctioned [by the rule], we hold that it is sufficient for the limited purpose of notifying the owner of an unattended motor vehicle of a parking citation." *Patterson v. Cronin*, 650 P.2d 531, 534 (Colo., 1982).

While Idaho's infraction laws operate *in personam* against the offending person who parked the car and not against the *res*, the parked car, it does not violate constitutional principles of due process to affix the summons to the vehicle rather than making personal service upon the owner or operator. Considering this issue, one court has said:

We find no merit in defendant's contention that his constitutional rights were invaded because the parking tickets were not handed to him or to the driver of the car, but were placed on the automobile. This argument has been

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

rejected by every court that has considered the question. . . . The existence and validity of the ordinances allowing placement of the citation upon the automobile is dictated by the practical and modern necessity of maintaining orderly traffic enforcement. *City of Seattle v. Stone*, 410 P.2d 583, 586 (Wash., 1966).

I hope this analysis will assist you in implementing the infraction laws which have been recently enacted in our state.

Sincerely,

D. MARC HAWS
Deputy Attorney General
Chief, Criminal Justice Division

DMH:jas

March 25, 1985

Honorable Terry Sverdsten
Idaho State Senate
Box 51, Route 1
Cataldo, ID 83810

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: School Discontinuance Procedure

Dear Senator Sverdsten:

You recently addressed a letter to the Attorney General's Office concerning the proper procedures for the discontinuance of a school.

The procedure for discontinuing a school is set forth in Idaho Code § 33-511 3. I am attaching a copy of the statute for your convenience. The procedures outlined therein can be summarized as follows:

1. The board of trustees must give notice of a proposed discontinuance not later than the first of July preceding the date of discontinuance.
2. Upon petition of five or more qualified school electors filed not later than the first day of August following the notice of the proposed discontinuance, the board shall order an election to be held within fourteen days.
3. The board must then give notice of election, stating the date and place of the

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

election, etc., and describing the area of attendance unit and the school proposed to be discontinued. The ballot shall provide an opportunity to vote for or against discontinuance.

4. If $\frac{2}{3}$ of the qualified voters vote against discontinuance, the school may not be discontinued.

In your letter you referred to an upcoming bond election in the district. I am unable to find any law or case that would prohibit a bond election when a discontinuance proposal is pending. Additionally, you asked whether the law had been tested. In *Wellard v. Marcum*, 82 Idaho 232 (1960), the Idaho Supreme Court held that the notice provisions of the statute are mandatory when a school meeting the definition of the statute is to be discontinued.

I hope this answers your questions. Please feel free to contact me if you need further clarification.

Sincerely,

BRADLEY H. HALL
Deputy Attorney General
State Department of Education

BHH:sj
Enclosure

April 12, 1985

Mr. Bruce Balderston
Legislative Auditor
STATEHOUSE MAIL

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Your Letter of March 11, 1985

Dear Mr. Balderston:

You have requested legal guidance concerning whether or not a fee which is intended to reimburse costs incurred by a district board of health falls within the definition of rulemaking for the purposes of Idaho Code § 39-416 and the Administrative Procedure Act. In your letter you directed our attention to Attorney General Opinion 81-4 which concluded that an inspection fee schedule falls within the definition of rulemaking in relationship to the APA as outlined above.

As pointed out in our prior opinion, Idaho Code § 39-416 permits local health district boards to adopt such rules and regulations as deemed necessary to carry out the

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

purposes and provisions of the Public Health District Act. As you correctly noted in your letter, these rules and regulations must be adopted, amended or rescinded in a manner conforming to the provisions of the APA. Further, the statute requires that such rules must be submitted to the state board of health and welfare, each municipality within the public health district's jurisdiction and to the board of county commissioners of each county prior to their taking effect.

The broad policies contained within the APA make it clear that a fee which is intended to reimburse costs incurred by the district health department would also fall within the definition of rulemaking. As noted in the prior Attorney General Opinion, all fee schedules would probably be rules or regulations as such fees would have general applicability to the public. In fact, it would appear that Idaho Code § 39-416 only exempts regulations adopted in the operation of the district board in its administrative functions and duties from the requirements of the Administrative Procedure Act. An example of this exemption would be an internal operating memorandum designed to instruct clerical staff in the appropriate accounting procedures to be used in handling receipts.

It should be noted that Idaho Code § 39-414 was amended in 1982 to grant specific authority to the local districts to charge fees:

- (ii) to establish fee schedules whereby the board agrees to render services to or for entities other than governmental or public agencies for a fee reasonably calculated to cover the cost of rendering such service.

At that time, the legislature could have, but did not, exempt fee schedules from the application of the APA. It appears, therefore, that all fee schedules should be adopted pursuant to the rulemaking process.

Finally, you have asked our advice concerning certain environmental fees promulgated by the state board of health in 1982. Specifically, you have asked whether or not a district board of health may establish a fee in the same area lower than the state-wide promulgated fee schedule. As noted above, for a fee schedule to be effective when adopted by a district board, it must be submitted to the state board of health and welfare for ratification. If this procedure is followed, it would be possible for two different fees to be adopted which could result in an inconsistency between the two fee schedules. It is our recommendation that it would be advisable to have consistent fees in this area. Should you have any questions on this matter, please feel free to contact me.

Very truly yours.

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

April 26, 1985

The Honorable Jim Stoicheff
Representative, District One
615 Lakeview
Sandpoint, Idaho 83864

The Honorable Kermit V. Kiebert
Senator District One
P.O. Box 187
Hope, Idaho 83836

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Proposed Kootenai County Watercraft Licensing Ordinance

Dear Representative Stoicheff and Senator Kiebert:

We have received a number of inquiries in addition to yours concerning a watercraft licensing ordinance proposed by the Kootenai County Commissioners. We will use this guideline to respond to all the inquiries we have received to date concerning this important matter.

The concern expressed by all correspondents may be generally summarized in two questions:

1. Is the proposed ordinance in conflict with or preempted by state law which governs boat safety and licensing; and
2. Is a greater license fee for non-residents than residents of the state a denial of equal protection of the law?

Short Answer

1. The proposed ordinance would not be in conflict with state law so long as it is reasonably related to the protection of the public health, safety and general welfare or amounts to a rental of county property.
2. Although differential licensing fees which discriminate between residents and non-residents have been upheld, we believe a single fee chargeable to all is more defensible.

ANALYSIS:

We have been provided several different drafts of an ordinance which has been proposed by the Kootenai County Commissioners. Although each is distinct, all are identical in their most important provisions.

Those provisions, if adopted, would require that all owners of vessels which use Kootenai County "boater facilities" pay an annual "boater service fee" for that privilege. A greater fee would be charged of non-residents, although the proposed ordinance states no reason for this disparity. Use of the "boater facilities" without the appropriate sticker would be punishable as a misdemeanor. The proposal cites no purposes other than the "cost of providing services to the boaters within Kootenai County" as a basis for the proposed fee.

For the purposes of this guideline, we assume that the term "Kootenai County boater facilities" refers only to those owned by the county and no others. If the county attempted to charge a fee to use state or privately owned property, it would of course be unlawful. We also note that the rental of county property may be subject to any federal or state grant restrictions if granted money was used to build or improve county facilities. For instance, recreational improvements such as boat docks have often been built with federal funds which are frequently given with "strings attached."

The questions posed by all correspondents in one form or another are whether the county may enact such an ordinance in light of state law in this area, particularly the Idaho Safe Boating Act, Idaho Code §§ 49-3201, et seq., and whether a greater fee may be charged to non-residents. We shall answer each question in turn.

Is County Regulation Preempted or Prohibited by State Law

Preemption

The doctrine of preemption provides that, just as federal law is superior to state law, so are state statutes superior to county ordinances. Preemption may be found where local regulations conflict with state law, where the matters are of statewide rather than local concern, where the state has completely occupied the field of regulation so as to exclude any local action, or where state law specifically prohibits local enactments on the same subject. Rhyné, *The Law of Local Government Operations*, § 19.11. Preemption generally will not be found where local law is consistent with state law or where local regulation is specifically authorized. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

In discussing preemption, much is made of the nature or kind of regulation involved. The Idaho courts give greater deference to local ordinances which are an exercise of the police power. This view is predicated upon the constitutional grant of the police power to local governments found in art. 12, § 2, Idaho Const. It provides that, "[a]ny 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."

Thus, any exercise of the police power which does not conflict with state law will generally be upheld unless specifically prohibited. *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983); *Benewah County Cattlemen's Ass'n v. Bd. of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983); *Voyles v. City of Nampa*, supra; *Taggart v. Latah County*, 78 Idaho 99, 298 P.2d 979 (1956); *Clyde Hess Distrib. Co. v.*

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Bannock County, 69 Idaho 505, 110 P.2d 798 (1949); *Clark v. Alloway*, 67 Idaho 32, 170 P.2d 425 (1946); *State v. Quong*, 8 Idaho 191, 67 P. 491 (1902); *State v. Preston*, 4 Idaho 220, 38 P. 694 (1894).

A most recent example of this proposition is the *Benewah County* case, *supra*. There, the county enacted an ordinance prohibiting livestock from running at large. The plaintiffs alleged that such an ordinance was in direct conflict with the herd district law, Idaho Code §§ 25-2401 to 25-2409, either because the state had preempted the field or because such an enactment was in conflict with the general laws. The supreme court held that the legislature had not preempted and that:

[E]ven assuming some legislative exercise of livestock control, we hold that *extension or amplification of that control by county ordinance is not prohibited* in the absence of constitutional or statutory provisions clearly evidencing intent [on the part of the state to occupy the field]. (Emphasis added.)

Thus, absent a clearly stated intent in the state law to preempt, the county is free to exercise its constitutional police power to regulate the conduct in question.

The regulation and licensing of watercraft is provided for in the Idaho Safe Boating Act, chap. 32, title 49, Idaho Code. Of particular interest is § 49-3229, which states in part that:

* * *

(2) The provisions of this chapter shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state or when any activity regulated by this chapter shall take place thereon; *provided however, that nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, so long as such ordinances are not in conflict with the provisions of this chapter.*

(3) *Any political subdivision of the state of Idaho may at any time, but only after sufficient public notice is given, adopt local ordinances with reference to the operation of vessels on any waters within its territorial limits or with reference to swimming within areas of intense or hazardous vessel traffic, provided such ordinances are intended to promote or protect the health, safety and general welfare of its citizenry. (emphasis added.)*

The language clearly contemplates local regulation not in conflict with general law. Thus, it is our opinion that local ordinances on this subject are not preempted by state law. In fact, they appear to be specifically authorized.

Since the proposed ordinance does not attempt to alter or prohibit state regulation, it is probably lawful, if it is found to be an exercise of the police power. However, it is difficult to ascertain whether the proposed ordinance is such an exercise since it only purports to “shift the cost of providing services to boaters.” We suggest that a careful

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

redrafting of the proposal is in order if it is intended to protect and promote the public health, safety and general welfare.

Revenue vs. Regulation

Some concern may be raised as to whether the proposed ordinance is truly a regulatory measure under the police power, or merely a disguised revenue measure. In either case, the ordinance could be lawful if properly drafted.

Generally, the cost of regulating conduct may be charged to those whose conduct is being regulated. *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 728 (1941). If the proposed ordinance is an exercise of the police power, i.e., regulatory, then the fee must be reasonably related to the cost of enforcement. Otherwise it may be a tax. *Foster's Inc.*, supra; *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923). Graduated fees have often been held to be taxes rather than regulatory fees. *Chapman v. Ada County*, 48 Idaho 632, 284 P. 259 (1930); 71 Am.Jur.2d, State & Local Taxes § 18, pp.353-4.

However, even if the fee is a tax, it may still be valid if it provides services which were formerly provided by ad valorem taxation. Idaho Code § 31-870. Such a determination is factual in nature and beyond the reach of this guideline. If such is the case, the ordinance should be drafted in a manner which states with some specificity exactly what services were funded by ad valorem taxes and are now being replaced by a fee.

Are Differential Fees Unlawful

Questions of different treatment under the law based upon status generally fall within the constitutional guarantees of equal protection of the laws. Article I, § 13, Idaho Const. Simply stated, the law requires that all persons be treated the same unless there is some very good reason not to. Thus, the question is whether there is any valid reason to charge nonresidents a greater fee than residents for the same service.

Some familiar examples of this practice are resident vs. nonresident fish and game license fees, in-state vs. out-of-state tuition for college and university students, and different rates for the use of state parks. The same practice also occurs in-state for residents and nonresidents of junior college districts, school districts, and other services.

The basic premise underlying all of these differential fees is that since a substantial portion of the cost of the services provided is funded by ad valorem taxes, and since nonresidents do not pay these taxes, they should pay a greater fee in order to equalize the differential. However, the difference must be reasonably related to the actual cost of the service. 16 Am.Jur.2d, Const. Law § 773; 35 Am.Jur.2d, Fish & Game §§ 34 and 35.

A fairly good summary of the cases in this area may be found at 57 A.L.R.3d 998, *Fees Charged Nonresidents*. However, the cases therein go both ways. In addition, the lead case, *Neptune City v. Avon by the Sea*, 61 N.J. 296, 294 A.2d 47, 57 A.L.R.3d, 983 (1972), holds that differentials are unconstitutional.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

While a differential fee is defensible if it is properly based, it will undoubtedly be challenged as discriminatory. A flat rate would be less likely to be overturned and thus avoid possible litigation and later refunding of previously collected fees. In addition, as previously stated, a graduated or differential fee is more indicative of a tax rather than a regulatory fee. Thus, we would recommend a flat fee for residents and nonresidents alike.

CONCLUSION:

County regulation of boat use and safety is authorized by Idaho law. The costs of regulation are generally chargeable to those who are regulated. However, regulatory fees which go beyond the costs of regulation may amount to revenue measures and must comport with state law in regard to taxation.

The county has the power to charge fees for the use of county property, but not state or private property. State property includes the beds and banks of navigable waters. In addition, rental fees may be subject to grant restrictions if the property was built or improved with grant monies.

Finally, although differential fees have been upheld, they are generally found to be revenue rather than regulatory measures. A flat rate fee is more defensible.

If we may provide further assistance upon this matter, please contact us.

Sincerely,

ROBIE G. RUSSELL
Deputy Attorney General
Chief, Local Government Division

RGR:cjm

cc: Senator Vern T. Lannen
Kootenai County Commissioners
Kootenai County Prosecuting Attorney
E. J. Fennessy
Leslie M. Mossburgh
Ray Kyer
Frank Parson

May 24, 1985

Ms. Betty Brown
Acting Executive Director
Idaho Commission on the Arts
STATEHOUSE MAIL

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Re: Request for Legal Guidance

Dear Ms. Brown:

Your letter of April 26, 1985, requests legal guidance regarding a proposed commission rule relating to funding. It is our understanding that Representative Ron Slater has presented two proposals. The language of the first proposed rule is as follows:

Grants will be denied to either groups or individuals who present material which, when considered as a whole can be reasonably said to constitute a gross indignity to either a religious or ethnic interest. Such grant denial shall remain in effect for one (1) year after such presentation has been made.

Appeals from any judgment made by the acting Commission executive will be heard by the Executive Board of the Commission. Public comment will be considered.

In the alternative, Representative Slater suggests that the first paragraph might read as follows:

The board or a political subdivision shall not provide grants, loans or other forms of assistance to artistic activities which, taken as a whole, have the effect of defaming or inciting contempt against persons on the basis of race, color, creed, religion, or national origin.

QUESTION PRESENTED:

You have requested that we review whether the proposed rules, if adopted, would survive constitutional scrutiny.

CONCLUSION:

Your question involves complex areas of constitutional law, and court decisions on similar issues have produced nonuniform and sometimes contradictory results. However, we believe that the proposed rules may fail to pass constitutional muster in that a court might hold them to: (1) result in a pattern of discrimination impinging upon First Amendment rights; (2) impose an unconstitutional condition on the award of a governmental subsidy; (3) be impermissibly vague; and/or (4) be overbroad.

ANALYSIS:

A. Pattern of Discrimination Impinging Upon First Amendment Rights

The First Amendment protects the rights of the viewers of productions.¹ The Constitution also appears to protect program producers, who occupy a position analogous to performers in auditoriums or speakers in public areas whose rights are clearly protected.² A content-based decision by a governmental agency may constitute an unlawful prior restraint upon a producer whose program cannot be produced and upon

viewers who are unable to view it if the editorial judgment of the governmental agency is based on constitutionally impermissible factors.³

The fact that the commission is engaged in an activity involving editorial decision-making does not automatically violate the First Amendment. The commission necessarily must exercise an editorial function and be selective in what it funds. The state's possession of editorial power will not, however, foreclose inquiry into the method of its exercise.

In the case of *Advocates for the Arts v. Thomson*,⁴ the Governor and Council of New Hampshire refused to approve an art grant for a literary magazine on the ground that it had published a poem which contained offensive language and imagery. The New Hampshire Commission on the Arts, created to administer the grants of the National Endowment for the Arts, routinely submitted grants of over \$500.00 to the Governor and Council for review.

Several organizations and individuals sought federal judicial intervention, arguing that the Governor's action constituted a prior restraint in contravention of the First Amendment. The Court of Appeals for the First Circuit found the doctrine of prior restraint inapplicable:

But public funding of the arts seeks "not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge" artistic expression. A disappointed grant applicant cannot complain that his work has been suppressed, but only that another's has been promoted in its stead. The decision to withhold support is unavoidably based in some part on the "subject matter" or "content" of expression, for the very assumption of public funding of the arts is that decisions will be made according to the literary or artistic worth of competing applicants. Given this focus on the comparative merit of literary and artistic works equally entitled to first amendment protection as "speech," courts have no particular institutional competence warranting case-by-case participation in the allocation of funds.⁵

The *Thomson* case thus appears to stand for the principle that the "disappointed grant applicant" cannot expect to have a federal court adjudicate the relative "literary or artistic worth of competing applicants." Nor will a federal court "require an objective measure of artistic merit as a matter of constitutional law."⁶

The First Circuit cautioned, however, that its decision did not countenance a pattern of discrimination. The court stated:

A claim of discrimination would be another matter. The real danger in the injection of government money into the marketplace of ideas is that the market will be distorted by the promotion of certain messages but not others. To some extent this danger is tolerable because counterbalanced by the hope that public funds will broaden the range of ideas expressed. But if the danger of distortion were to be evidenced by a pattern of discrimination impinging on the basic first amendment right to free and full debate on matters of public interest, a constitutional remedy would surely be appropriate.⁷

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

The court then noted that distribution of arts grants on the basis of such extrinsic considerations as the applicants' political views, associations, or activities would violate the Equal Protection Clause, if not the First Amendment, by penalizing the exercise of those freedoms.⁸

In the *Thomson* case, the New Hampshire authorities had not adopted a written regulation regarding the appropriate content of projects eligible for funding. By contrast, if the Idaho commission were to adopt Representative Slater's prepared regulations, it would formalize by codification rules requiring the commission to temper its otherwise subjective judgment regarding the artistic merit of a proposal by consideration of issues extraneous to artistic merit such as whether a project constitutes a "gross indignity to either a religious or ethnic interest" or "incites contempt against persons on the basis of race, color, creed, religion, or national origin." Such codification may give rise to the very type of a pattern of discrimination which the *Thomson* case proscribed.

In short, while adoption of concise and clear standards may be impractical in the present context, the commission may not adopt a regulatory framework which inhibits its review of a project's artistic merit and clearly implicates the First Amendment rights of producers and consumers of artistic projects. The Idaho Legislature created the commission to stimulate and encourage the arts and assist freedom of artistic expression.⁹ The proposed regulations would instead require the commission to review issues extraneous to artistic merit in making its funding decisions. Should the commission adopt such regulations, litigation is likely. In any such litigation, the commission would be in a position of defending a rule which restricts the freedom of artistic expression which the commission is statutorily charged with encouraging.

B. *Unconstitutional Condition*

The United States Supreme Court has long held that the government may not deny a valuable governmental benefit on a ground that infringes upon a constitutional right.¹⁰ Denial of a benefit on such a basis requires an individual to forego a constitutional right to receive a governmental benefit, thus placing an unconstitutional condition on the benefit:

For at least a quarter-century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. It *may not deny a benefit to a person on a basis that infringes his constitutionally protected interests — especially, his interest in freedom of speech*. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly."¹¹

Theatrical productions and other forms of live artistic expression supported by the commission are protected by the First Amendment.¹²

The proposed rules would require the commission to condition its grant of the benefit of funding upon the content of the material presented by individuals or groups. Because fundamental First Amendment rights are involved, an extremely strong showing is necessary to support a finding of constitutionality. The proposed rules would have to “survive exacting scrutiny” by a court.¹³ In a challenge, the state would bear the burden of justifying the rule.¹⁴ Furthermore, the state must show a weighty state interest underlying the rule.¹⁵ The state must also show that the rules represent the least drastic means of protecting the governmental interest involved.¹⁶

Finally, while the government must necessarily make a content-based decision when it seeks to *promote* free expression in areas such as public broadcasting and subsidization of the arts,¹⁷ a court will “review with particular care any claim that the governmental body is actually attempting to suppress controversial, political, or other forms of expression, rather than attempting to promote certain limited forms of entertainment.”¹⁸ In face of such a claim, the court will examine whether the commission has employed a “clear, precisely drawn, objective standard” in choosing the productions it wishes to promote.¹⁹ The Ninth Circuit has stated:

[T]he more subjective the standard used, the more likely that the category will not meet the requirements of the First Amendment; for, *when guided only by subjective, amorphous standards, government officials retain the unbridled discretion over expression. That is condemned by the First Amendment.*²⁰

The two standards proposed in this case may be too amorphous to satisfy the First Amendment. What constitutes “a gross indignity to . . . a religious or ethnic interest” or has “the effect of defaming or inciting contempt against persons on the basis of race, creed, religion, or national origin” is necessarily a subjective judgment which could be held to place “unbridled discretion” in the commission’s hands.

In addition, when the decision will be made by a body subject to political pressures, the court will scrutinize it most carefully because “at times the will of the majority may for the moment run contrary to the protections that the First Amendment affords political and other controversial forms of expression.”²¹ The attempt in the proposed rules to involve the public in such decisions may only serve to politicize the process and thus exacerbate rather than cure the problem.

In summary, the commission cannot condition a governmental benefit upon forfeiture of a First Amendment right. Because a fundamental right is involved, the state must meet a heavy burden to support the proposed rule. A reviewing court would subject the proposed rule to strict scrutiny — especially in light of the commission’s duty “to encourage and assist freedom of expression.”²² It is our opinion that the proposed rule would probably not withstand judicial scrutiny.

C. *Vagueness and Overbreadth*

The United States Supreme Court has stated that “it is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.”²³ Vagueness in the First Amendment area must be strictly curtailed because

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

ambiguity may have a “chilling effect” by inhibiting citizens from exercising their fundamental constitutional rights.²⁴ A greater degree of specificity is therefore demanded when a regulation impinges on the First Amendment.²⁵ The complementary doctrine of overbreadth is based on the principle that a “clear and precise enactment may nevertheless be overbroad if in its reach it prohibits constitutionally protected conduct.”²⁶

The standard used in determining whether a challenged rule is vague is whether “men of common intelligence must necessarily guess at its meaning.”²⁷ The proposed rules are both vague. Men of common intelligence would not necessarily agree as to what constitutes “a gross indignity to either a religious or an ethnic interest.” Similarly, men of common intelligence would likely disagree regarding what “has the effect of . . . inciting contempt against persons on the basis of race, color, creed, religion or national origin.” In addition, both alternatives can apply to cover constitutionally protected expression. For example, even the works of Shakespeare and Mark Twain are periodically assailed as “inciting contempt” or presenting “a gross indignity” to various religious and ethnic groups.

In the Seventh Circuit case of *Collin v. Smith*, an ordinance which prohibited dissemination of material “which promotes and incites hatred against persons by reason of their race, national origin or religion, and is intended to do so” was struck down as unconstitutional based on the doctrine of overbreadth and to a lesser degree on the doctrine of vagueness.²⁸ As one of the proposed commission rules is almost identical to that ordinance, the *Collin* case offers compelling authority for the proposition that the proposed rule would be held overbroad and vague.

In summary, the Constitution requires that administrative rules, like laws, have sufficient clarity to allow for uniform interpretation and application. In addition, a rule must not be overbroad so as to prohibit protected expression in an attempt to reach unprotected expression. It is probable that both formulations of the proposed rule would fall short of the constitutional requirements.

SUMMARY:

It is the opinion of this office that if the proposed rules were subjected to a constitutional challenge they would likely be held to: (1) result in a pattern of discrimination impinging upon First Amendment rights; (2) impose an unconstitutional condition on the award of a governmental subsidy; (3) be impermissibly vague; and/or (4) be overbroad.

Very truly yours,

SHEILA GLUSCO BUSH
Deputy Attorney General
Administrative Law and Litigation Division

SGB:ams

¹See *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 89 S.Ct. 1794, 23 L.Ed.2d 371 (1969).

²See *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 56, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975).

³See Note, “Freeing Public Broadcasting from Unconstitutional Restraints,” 89 Yale Law Journal 719, 738 (1980).

⁴532 F.2d 792 (1st Cir. 1976), *cert. denied*, 429 U.S. 894 (1976) (citations omitted).

⁵*Id.* at 795-796 (citations omitted).

⁶*Id.* at 797.

⁷*Id.* at 798 (citations omitted).

⁸*Id.* at 798, n.8.

⁹See Idaho Code § 67-5605.

¹⁰*Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972).

¹¹*Id.* (emphasis added) (citations omitted).

¹²*Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65, 101 S.Ct. 2176, 2180, 68 L.Ed.2d 671 (1981).

¹³*Buckley v. Valeo*, 424 U.S. 1, 64, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976).

¹⁴*Rosen v. Port of Portland*, 641 F.2d 1243, 1246 (9th Cir. 1981).

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Advocates for the Arts v. Thomson*, 532 F.2d 792 (1st Cir. 1976), *cert. denied*, 429 U.S. 894 (1976).

¹⁸*Cinevision Corp. v. City of Burbank*, 745 F.2d at 575.

¹⁹*Id.*

²⁰*Id.* (emphasis added).

²¹*Id.*

²²*Id.*

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

²³*Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972).

²⁴*Id.* at 108-09.

²⁵*Smith v. Goguen*, 415 U.S. 566, 572-73, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974).

²⁶*Grayned v. City of Rockford*, 408 U.S. at 114.

²⁷*Broadrick v. Oklahoma*, 413 U.S. 601, 607, 93 S.Ct. 2908, 2913, 37 L.Ed.2d 830 (1973).

²⁸*Collin v. Smith*, 578 F.2d 1197, 1207 (7th Cir. 1978), *cert. denied* 439 U.S. 916 (1978).

June 3, 1985

Mr. Philip H. Robinson
Bonner County Prosecutor
P.O. Box 1486
Sandpoint, ID 83864

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: Obtaining Blood Samples from Minors
Who Drive Under the Influence of Alcohol

Dear Mr. Robinson:

Workloads and priorities have made it impossible to answer your request for an opinion until now. I hope the following analysis will still be of benefit to you.

Narrowly framed, your question is whether it is necessary, when a minor is arrested for driving under the influence of alcohol, to get parental consent before a sample of blood is drawn from the minor for evidentiary purposes. Succinctly, the answer is that the legislature intended to make the implied consent law applicable to all drivers of motor vehicles, including minors. Therefore, there is no requirement that parental consent be obtained before blood can be drawn for an evidentiary test.

Analysis begins with the express, basic provision that:

Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to an evidentiary test for concentration of alcohol, drugs, or other intoxicating substances . . . provided that such test is administered at the request of a police officer having reasonable grounds to believe that person has been driving or in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or

any other intoxicating substances. Idaho Code § 18-8002 (emphasis supplied).

This statute is clear and all-inclusive; it makes no distinction between adult drivers and minor drivers — it applies to “any person who drives.” The test to which a driver is deemed to have consented is not for treatment or blood donation purposes, but is an “evidentiary test” to determine the ability of the motorist to safely drive a car. The evidentiary test is defined in Idaho Code § 18-8004 as an analysis of *blood*, urine, breath, or other bodily substance for alcohol content.

The policy and provisions of a statute are to be given effect where there is no ambiguity on the face of the statute, where the intent of the legislature is clearly manifested, and where no irreconcilable conflict with other laws vitiates the force of the statutes. *Umphrey v. Sprinkel*, 106 Idaho 700, 682 P.2d 1247 (1983); *Smith v. Department of Employment*, 100 Idaho 520, 602 P.2d 18 (1979).

Your letter conveys the opinion of some persons in your jurisdiction who suggest that statutes dealing with other subjects and predating the implied consent law should be given controlling effect over the express provisions referred to above in Idaho Code § 18-8002. Specifically, it is suggested that provisions of blood donation laws, ch. 37, title 39, Idaho Code, and laws dealing with consent for treatment of minors, ch. 38, title 39, Idaho Code, counteract the clear intent of the law that any driver of a motor vehicle who is reasonably believed to be under the influence of alcohol or drugs has consented to an evidentiary blood analysis. A review of the donation and parental consent provisions shows that these statutes do not conflict with or derogate from the implied consent law.

Idaho Code § 39-3701 provides that “any person who is seventeen (17) years of age or older shall be eligible to donate blood in a voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization.” This law deals with the very specific subject of *blood donations* by minors. It is not in conflict with the provisions of Idaho Code § 18-8002 requiring that *blood tests* for evidentiary purposes be administered to drivers who are believed to be operating a motor vehicle while under the influence of intoxicants. The intent and purpose of both laws can be given full effect for they are not in conflict.

Idaho Code § 39-4303 does not specifically deal with drawing of blood from a minor; it deals with consent before medical and surgical *care, treatment, or procedures* are administered to minors and persons who are temporarily or permanently incapacitated and unable to give informed consent for treatment. (Idaho Code § 32-101 defines a minor as a person under the age of eighteen.)

The purpose of the consent provision is far different from and of more general import than Idaho Code § 18-8002 which deals with evidentiary tests of blood of drivers suspected of being under the influence of alcohol or drugs. A basic rule of statutory construction is that a statute of general import will not control an area covered by a more specific statute. *Mikelson v. City of Rexburg*, 101 Idaho 305, 612 P.2d 542 (1980). The *Mikelson* case also stands for the principle that if two statutes are in irreconcilable conflict, the one enacted later in time will govern. Idaho Code § 39-4303

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

relating to consent to medical procedures was enacted in 1975; the more specific statute, Idaho Code § 18-8002, dealing with implied consent of drivers to evidentiary tests for alcohol, was enacted in 1984. Being both later in time and more specific, the implied consent law will control over the parental consent provisions in areas where the two laws may be perceived to be in conflict.

It is proper in construing legislation not only to consider the literal wording of the statute, but also to take into account other matters such as context, evils to be remedied, history of the times, legislation upon the subject and public policy. *Local 1494 of I.A.F. v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978).

The legislature issued a policy statement when it revised its laws pertaining to driving under the influence of intoxicants. It said:

The use of the public highways of the state is a privilege granted by the state for the enjoyment and well being of all citizens. It is a privilege and not a right. In order to make sure that this privilege is not abused, it is necessary that such privileges be controlled or restricted. . . . It is the purpose of the several sections of law contained within this act [including the implied consent provision] to provide the necessary administrative and judicial procedures to insure that the highways are safe for travel by law-abiding citizens, to restrict or control the use of the highways by those persons who cannot or will not conform their actions to the accepted standards of civilized behavior. . . . [I]t is the intent of the Idaho state legislature . . . that those who abuse the privilege of driving upon the highways while under the influence of alcohol, drugs, or other intoxicating substances shall be viewed . . . as a serious threat to the health and safety of law abiding users of the highways. 1983 Idaho Session Laws, ch. 145, pp. 368-369.

It would defy logic and common sense to argue that minors who drive under the influence of intoxicants are in any substantive way different from or less of a threat to law abiding motorists than those over the age of 18. Having been given the privilege of driving a vehicle upon Idaho's highways, a minor accepts also the responsibilities that go with this conditional privilege. One of the conditions of the privilege to drive is that a person consents to an evidentiary blood, breath, or urine test when there is reason to believe the driving privilege is being abused. Implicit in the effect of Idaho Code § 18-8002 is the policy that, having accepted the privilege of engaging in an activity reserved to persons of mature judgment, a minor must also abide by the standards and responsibilities that must accompany that activity. For this reason, the legislature provided that the implied consent law should have universal application: "*any person who drives . . . shall be deemed to have given his consent to an evidentiary test.*" Idaho Code § 18-8002. There is no lesser standard for minors; nor will minors avoid the consequences of refusing a test because it lacks the consent of their parents. The drawing of blood for an evidentiary test is not such a life or health threatening procedure that parental choice or counsel is implicated.

An analogous provision of Idaho Code § 18-8002(2) is also worth noting: The statute does not even permit a person suspected of driving while under the influence of alcohol to consult with his attorney before deciding whether or not to submit to an

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

evidentiary test. The significance of limiting the motorist's consultation with a wise and responsible person to whom one would naturally turn when in difficulty — much like a child turns to a parent — illustrates the deliberate choice of the legislature that any motorist suspected of being intoxicated must submit to an evidentiary test or pay the consequences of refusal.

In recognition of the reluctance of medical personnel to take “legal” blood samples — evidence — from a patient so that the patient can be prosecuted criminally, and in recognition of the needs of law enforcement officers to obtain necessary medical assistance against intoxicated drivers, the law makers have given medical personnel complete immunity from civil and criminal liability for “any act arising out of administering an evidentiary test for alcohol concentration at the request of a police officer. . . .” Idaho Code § 18-8002(6). The statute gives this shield of immunity to hospitals, hospital officers, hospital agents, hospital employees, and health care professionals licensed by the state of Idaho. Medical personnel or institutions do not enjoy legal standing to question on behalf of minor drivers whether they should submit to an evidentiary test.

In conclusion, it is readily apparent that the statutes on blood donations and consent for treatment deal with far different policies than those embodied in the implied consent law. They are effectual in their context. But where the legislature has at a later date and in a more specific manner addressed a different policy concern — enforcement of traffic laws in order to assure safety of travel on state highways — the intent is that the statutes dealing with health care of minors and blood donations by minors will not control. When minors or any other persons drive and there is reason to believe that they are under the influence of an intoxicant, they are deemed to have already consented to an evidentiary test — including a blood test. Lack of parental consent to the drawing of blood will not frustrate the requirements of the DUI laws.

Sincerely,

D. MARC HAWS
Deputy Attorney General
Chief, Criminal Justice Division

DMH:jas

July 17, 1985

The Honorable Phil Childers
Representative, District 15
3440 Quail Place
Boise, ID 83704

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Auditorium Districts

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Dear Representative Childers:

Your letter poses several questions concerning the powers and duties of auditorium districts generally and the Greater Boise Auditorium District in particular.

1. *Is it constitutional to bind current electors of the district (many of whom were not even born in 1959) to current projects of the district which are entirely different from the objective of the original district's petitioners and the cost for which is entirely different from that for which the original petitioners gave their approval?* [emphasis in original]
2. The original legislation did not authorize the auditorium district to fund a Visitor's Bureau such as the Greater Boise Auditorium District has done. *** Is this activity constitutional?
3. [paraphrasing] May other properly formed auditorium districts conduct similar activities?
4. The Greater Boise Auditorium District is presently seeking a pledge of "full faith and credit and discharge of bond elections." *** Did the original petition authorize this?
5. Do current residents of the district have the right to request a new petition to authorize all the new activities this district has now become involved in?

Short Answer

1. The authority of special purpose taxing districts is granted by the legislature, not by petition. It is that body that establishes their powers and duties and may change them from time to time. The sole purpose of a petition under the auditorium district law is to request an election to decide whether a district shall be formed according to law.
2. It is arguable that the support of a "Convention and Visitor's Bureau" is a lawful expenditure since, in the judgment of the Board, it serves to "promote" the functions and purposes of the district. However, we are unsure whether the management, ownership or construction of a facility is a prerequisite to such promotional activity. A determination, based on the particular facts of a given case, would have to be made by a court of law.
3. Districts formed according to law would have identical powers.
4. As stated in answer to question No. 1, petitions do not authorize activity on the part of taxing districts; the legislature does. If the legislature amends the law, the district would be bound thereby, regardless of prior petition language.
5. Once formed, the district may carry on any statutorily authorized activity until it is dissolved by the legislature or by election. A "new" petition is not autho-

ized by law for any purposes other than calling for a dissolution election or seeking the annexation or severance of real property.

ANALYSIS:

The statutes providing for the formation and operation of auditorium districts are found in chapter 49, title 67, Idaho Code. Originally adopted in 1959 (1959 Session Laws, ch. 137, p. 299) and amended some 11 times since, the chapter provides a fairly detailed framework for the conduct of auditorium district business. To date, the only district formed under the chapter is the Greater Boise Auditorium District. It was formed after a vote of the electorate in 1959.

The questions propounded in your correspondence deal with the district's formation and its present funding of a "Visitor's and Convention Bureau" operated jointly with the Greater Boise Chamber of Commerce. Generally, you ask whether the district's activities are "constitutional." This opinion will address both the constitutional and the statutory authorization for the district's present activities.

The Petition

Question Nos. 1, 4, and 5 deal with formation petitions generally, and the 1959 Greater Boise Auditorium District petition in particular. Each revolves around the question of whether the language contained in a petition to form a special purpose taxing district somehow binds the district *in futuro*. Such is not the case. The petition does not create the district and thus does not provide the organic basis for its subsequent activities.

Special purpose taxing districts are quasi-municipal corporations whose formation and function are authorized by the legislature. As such, they are subject to the same rules that govern cities and counties. *Strickfaden v. Greencreek Highway District*, 42 Idaho 738, 248 P. 456 (1926). 1 McQuillin on Municipal Corporations §§ 302a-305. As such, they exercise only those powers granted by the legislature or necessarily implied therefrom. Limitations on those powers may only come by way of legislative enactment, statewide initiative, or constitutional amendment. Formation petitions do not accomplish this.

A petition is a formalized request or application made in writing to a person or body of authority to beget some action or thing. *Ballantine's Law Dictionary* (3rd Ed., 1969). Its purpose is to generally set forth the matters upon which the petitioners desire some action be taken.

Petitions are commonly used in the governing process to provide a means whereby the citizenry may invoke some legal process or otherwise make their wishes known. Examples include nominating petitions (which are non-binding in that a vote is not required for the candidate whose petition is signed); city incorporation petitions, Idaho Code § 50-101 (which requires a legal description of the proposed city, but which may be altered after incorporation by annexation, dissolution, etc.); junior college districts, Idaho Code § 33-2104; herd districts, Idaho Code § 25-2402; local improvement districts, Idaho Code § 50-1706; and numerous other special purpose taxing dis-

tricts. They all have two things in common: First, the formation petition does not create the district, it merely invokes the process by which the district is formed. Second, the powers of the district derive not from the formation petition, but from the enabling legislation. Once created, the district is governed by the specific statutes enacted and amended from time to time by the legislature.

The formation petition requirements for auditorium districts are found in Idaho Code § 67-4904. It provides the information which must be placed in the petition in order to put the signatories on notice as to what they are signing. The requirements are general in nature. For example, the statute merely requires “a *general* description of the facilities,” “the *estimated* cost,” and “a *general* description of the boundaries.” The use of those kinds of terms indicates the general notice nature of the petition. Nothing in the statute prohibits the district or the legislature from amending those statements once the district is formed. Such a result would be both unconstitutional and illogical. First, no legislature may bind future legislatures by enacting laws which may not be changed, art. I, § 2, Idaho Constitution. In addition, the legislature may not delegate its discretionary authority to make subsequent changes in the law to another body or group, art. II, § 1, Idaho Constitution. Making formation petitions binding would violate both these constitutional principles. Secondly, logic dictates that special districts, once formed, must be able to change with changing needs and conditions. An example is contained within the act itself: the authority to include or exclude property within the bounds of the district, Idaho Code §§ 67-4918 and 4919. If the district was forever bound by the legal description contained in the original petition, it could not expand or contract, irrespective of subsequent requests. However, the act specifically authorizes such conduct. Thus, the legislature has recognized the informational nature of the formation petition. *See also*, 1 McQuillin on Municipal Corporations §§ 3.27 et seq.

In direct response to your petition questions, it is our opinion that the district is not forever bound by the statements made in the original formation petition. The purpose of those statements was to inform potential signatories of what they were signing. The purposes announced in the original formation petition for which the district was formed may be altered over time; by the district in accordance with the law or by the legislature through statutory amendment. Once created, the district is bound solely by the statutes as they existed at the time of formation or as they may be amended from time to time.

Subsequent requests for statutory amendments are not governed by the original petitions. Proposed changes in the laws may be advanced by anyone, citizens, legislators, or members of the district board. Such is the normal political process. No law prohibits local governments, acting through their elected officials, from seeking changes in laws which affect their operations.

Finally, once formed, the only petitions authorized in connection with the district are those for the inclusion or exclusion of property, Idaho Code §§ 67-4918 and 4919, and petitions calling for an election to dissolve the district, Idaho Code § 67-4930. No provision is made in the law for new formation petitions for an existing district. Persons who wish to participate in or influence the district may do so by using the normal processes available for that purpose. They include: seeking district office, attending

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

meetings, seeking changes in state law, influencing public opinion and any other lawful means of participation in the affairs of government.

Convention and Visitor's Bureau

You have also asked whether an auditorium district is authorized to expend monies for the operation of a "Visitor's Bureau" since such "was not authorized in the original legislation." The activity you inquire after is known as the "Boise Convention and Visitors' Bureau." It is operated by the district in conjunction with the Greater Boise Chamber of Commerce. To the best of our knowledge, its purpose is to promote Boise to tourists and conventions in order to attract them to the area.

In order to answer your question, we must first ascertain whether public funds may be expended for the purposes of advertising or promotion:

All appropriations or expenditures of public money by municipalities and indebtedness created by them, must be for a public and corporate purpose as distinguished from a private purpose . . .

14 *McQuillin on Muni. Corp.* § 39.19. The same rule prevails in Idaho:

It is a fundamental constitutional limitation upon the powers of government that activities engaged in by the state, funded by tax revenues, must have primarily a public rather than a private purpose. A public purpose is an activity that serves to benefit the community as a whole and which is directly related to the functions of government.

Idaho Water Resources Bd. v. Kramer, 97 Idaho 535, 559, 548 P.2d 35 (1976). See also *Gem Irrigation Dist. v. Van Deusen*, 31 Idaho 779, 176 P. 887 (1918).

Also of note is the corollary proposition that while public funds must be expended for public purposes, it is immaterial that some of the benefits from the expenditure of public funds may fall to private entities so long as the overriding purpose of the expenditure is public in nature. *Board of Commissioners of Twin Falls County v. Idaho Health Facilities Authority*, 96 Idaho 498, 531 P.2d 588 (1974); *Engelking v. Investment Board*, 93 Idaho 217, 458 P.2d 213 (1969).

A thorough review of Idaho Supreme Court cases reveals no decisions concerning the expenditure of district funds to advertise and promote the district. However, the question has been considered in other contexts and other jurisdictions. Cases have held that expenditures for advertising or promoting a city, its resources, and other attributes are expenditures for a public purpose. *City of Tucson v. Sunshine Climate Club*, 64 Ariz. 1, 164 P.2d 598 (1946); *Sacramento Chamber of Commerce v. Stephens*, 299 P. 728 (Cal. 1931); *San Antonio v. Paul Anderson Co.*, 41 S.W.2d 108 (Texas 1931); see *Jarvill v. City of Eugene*, 40 Ore. App. 185, 594 P.2d 1261 (1979); 15 *McQuillin on Muni. Corp.* § 39.21, n. 56.

Although the Idaho Supreme Court has not directly considered this exact question it has had occasion to consider closely related issues. In the case of *State v. Enking*, 59

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Idaho 321, 82 P.2d 649 (1938), the Supreme Court had to decide whether a tax on produce levied for the purpose of providing a fund for advertising was lawful. In upholding the tax, the court stated that:

[T]he tax having been levied for the purpose of providing an advertising fund for advertising such fruits and vegetables is valid and for a public purpose in that the protection of the apple, prune, potato, and onion industry is as much a matter of public concern to Idaho as the citrus fruit industry is to Florida. . . .

An earlier case, *Bevis v. Wright*, 31 Idaho 676, 125 P. 815 (1918), held the levying of a tax to provide a fund for exhibition of the products and industries of the county at domestic and foreign expositions for the purpose of encouraging immigration and increasing trade in the products of the State of Idaho was for a public purpose and therefore constitutional.

Advertising and promotion have also been found to be public purposes by the Idaho Legislature. The Idaho Code contains several authorizations for public entities to promote themselves and their commodities. For example, Idaho Code § 22-2918 authorizes the Idaho Bean Commission to advertise commodities; Idaho Code § 67-4703 authorizes the state Division of Economic and Community Affairs:

. . . [T]o engage in advertising the State of Idaho, its resources, both developed and undeveloped, its tourist resources and attractions, its agricultural, mining, lumbering and manufacturing resources, its health conditions and advantages, its scenic beauty and its other attractions and advantages; and in general either directly, indirectly or by contract do anything and take any action which will promote and advertise the resources and products of the state of Idaho, develop its resources and industries, promote tourist travel to and within the state of Idaho, and further the welfare and prosperity of its citizens.

Other examples can also be found within the code.

Based upon the foregoing it is our opinion that auditorium districts may lawfully expend public funds for the purposes of advertising and promoting themselves, their citizens and their industry since such advertising and promotion has been found to be a public purpose both by the courts and by the legislature. Furthermore, the courts have found such practices to be in harmony with constitutional prohibitions against public aid in support of private endeavors.

Authorization for the creation and operation of auditorium districts is contained in title 67, ch. 49, Idaho Code. Idaho Code § 67-4901, entitled "Purpose of Act," states that:

It is hereby declared that the organization of auditorium or community center districts, having the purposes and powers provided in this act, will serve the public need and use and will promote the prosperity, security, and general welfare of the inhabitants of said districts.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Section 67-4902, entitled "Definitions," states that:

An auditorium or community center district is one to build, operate, maintain and manage for public, commercial and/or industrial purposes by any available means public auditoriums, exhibition halls, convention centers, sports arenas, and facilities of a similar nature, and for that purpose any such district shall have the power to construct, maintain, manage and operate such facilities. ***

Section 67-4912 outlines the general powers of the board. Among those powers are § 67-4912(m):

To promote any functions for said district, provided that such board shall not engage in operations that are inconsistent with the purpose of said district; and it shall be the policy of the board not to compete with existing facilities and services in the district, whenever practicable; (emphasis added)

And § 67-4912(o):

To have and exercise all rights and powers necessary or incidental or implied from the specific powers granted herein. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this act.

The general rule is that a municipal corporation has no power to spend money for advertising or other forms of promotional activity absent legislative authorization. 56 Am.Jur. 2d *Municipal Corporations* § 205.

Since the board is authorized "to promote the functions of the district," (§ 67-4912(m)) and one of the functions of the district is "to build, operate, maintain, and manage . . . public auditoriums, . . . convention centers, . . . and facilities of a similar nature, . . ." (§ 67-4902), it can be argued that the board possesses the corresponding authority to promote the use of those facilities to groups most likely to use them — tourists and conventions.

The question that remains is whether the planning, construction, ownership, or management of an authorized facility is a prerequisite to the promotion thereof.

On the one hand, it can be argued that the presence of a facility is unnecessary for the reason that the construction or ownership of a facility is merely one of several purposes for which a district may exist. As previously stated, the others are the promotion of "the prosperity, security, and general welfare" of the district's citizens. Bringing business to town would seem to serve that purpose.

Moreover, since conventions are booked several years in advance, it can be argued that promotion prior to construction is necessary in order to assure facility use and income at the time of completion.

On the other hand, it can be argued that the authorization to promote and advertise

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

goes hand in hand with the construction or ownership of an authorized facility. Simply stated, the district can't promote what it doesn't have.

A review of the case law has revealed no cases which answer this question. Additionally, any determination would depend largely upon the particular facts of each case. We do not possess such information. Thus, we are unable to offer any firm opinion on the matter.

Other Districts

You also asked whether other properly formed districts could conduct activities similar to those engaged in by the Greater Boise Auditorium District. In our opinion, the foregoing analysis would apply equally as well to any other auditorium districts.

Sincerely,

ROBIE G. RUSSELL
Deputy Attorney General
Chief, Local Government Division

RGR:cjm

August 29, 1985

Mr. Bill Wallis
State Fire Marshal
Department of Insurance
700 W. State Street
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Dear Bill:

ISSUES:

Your letter asks three questions:

1. Does the state fire marshal have arrest powers in arson cases?
2. Does the state fire marshal have authority to carry weapons when dealing with arson investigations?
3. Is the office of state fire marshal recognizable as a law enforcement agency under state law?

CONCLUSIONS:

1. The state fire marshal has arrest powers in arson cases.
2. The state fire marshal has the ability to carry a concealed weapon during an arson investigation.
3. The state fire marshal is properly recognized as a law enforcement official and peace officer.

ANALYSIS:

The first two questions raised in your letter turn on the answer to the third question, namely, whether the office of state fire marshal is recognizable as a law enforcement agency under state law. Idaho Code § 19-5101(c) provides a useful definition of “law enforcement” as “any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, rehabilitation, and juvenile delinquency.” Thus, a law enforcement agency is any agency dealing with the prevention or reduction of crime and the enforcement of state laws.

The office of state fire marshal falls within this definition. Under Idaho Code § 41-254, the state fire marshal has the power and duty to “enforce the uniform fire code.” Under Idaho Code § 41-255, he has the duty to “administer and enforce this act,” i.e., sections 41-253 through -269 of the Code. Further, in his capacity as the state’s chief arson investigation officer, the state fire marshal has broad powers in matters of “fire prevention and arson investigation.” See Idaho Code § 41-257.

Even more importantly for purposes of this opinion, the position of state fire marshal should be recognized as that of a “peace officer” of the State of Idaho. Idaho Code § 41-257 gives the state fire marshal the “same responsibility and power in arson investigation as a county sheriff.” He thus shares in the county sheriff’s status as a peace officer under Idaho Code § 19-310. In short, the state fire marshal, when shouldering the “same responsibility and power in arson investigation as a county sheriff,” must enforce the state laws. In view of the state fire marshal’s responsibility to reduce or prevent arson and to exercise the powers of a sheriff in arson investigations, he comes within the definition of a “law enforcement” official and a “peace officer” whenever he is involved with an arson investigation.

Because the state fire marshal is a peace officer, he may exercise arrest powers in the course of an arson investigation. Idaho Code § 19-601 defines arrest and states that an arrest may be made by either a “peace officer or by a private person.” Idaho Code § 19-603 enumerates the circumstances in which a peace officer can make an arrest, including the commission of a felony, of which arson is one. See Idaho Code §§ 18-801 through -804. Idaho Code § 41-257 circumscribes the exercise of the state fire marshal’s powers as follows:

He will not, however, interfere at any time in the operation or administration of any fire department or sheriff’s office except in matters of fire prevention and arson investigation when requested by the local fire jurisdiction, sheriff’s office or written and signed complaint of any person served by the local fire jurisdiction.

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Thus, the fire marshal has been given the equivalent of the sheriff's power, including the power to arrest, but only with respect to fire prevention and arson investigation when requested. In the nature of things, an arson investigation would rarely present a situation justifying a warrantless arrest. Here, as elsewhere, the statute envisions close cooperation between the state fire marshal and local law enforcement officials.

The second question concerns the ability of the state fire marshal to carry weapons when dealing with arson investigations. Idaho Code § 18-3302 outlines the concealed and dangerous weapons which are illegal in Idaho and the punishments for violation of the law. It also excepts from the law possession of the specified concealed weapons by, among others, officials of the state of Idaho and peace officers. The chief arson investigation officer, appointed by the director of the department of insurance with the approval of the governor, is an official of the state of Idaho and, as set forth above, a peace officer. He is therefore allowed to carry a concealed weapon during arson investigations.

Sincerely,

JOHN J. McMAHON
Chief Deputy

JJM:lh

September 18, 1985

The Honorable Laird Noh
Idaho State Senator
Route 1, Box 65
Kimberly, ID 83341

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Letter of August 31, 1985

Dear Senator Noh:

Pursuant to your request we have reviewed Section 36-202(r)(1) of the Idaho Code. That section provides as follows:

Idaho residents shall not lose their residency in Idaho if they are absent from the state for religious (not to exceed two (2) years) or educational (not to exceed five (5) years) purposes and do not claim residency *or* use resident privileges in any other state or county for the purposes of hunting, fishing or trapping. (emphasis added)

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

You have asked whether this section precludes a person from obtaining an Idaho resident hunting and fishing permit if they claim residency in another state for any purpose other than hunting and fishing. Our conclusion is that the statute would prevent a person from obtaining an Idaho resident hunting, fishing or trapping permit if they claim residency in another state for any purpose.

As written, the use of the disjunctive word "or" in this section sets up two possible ways for a person to lose their resident hunting and fishing privileges while absent from the state for religious or educational purposes. If the individual claims residency in another state, the Idaho hunting and fishing privileges are lost. Secondly, if the individual uses resident hunting and fishing privileges in another state, their corresponding Idaho privileges are lost.

While our analysis is based upon the language of the statute, we have made a few inquiries concerning the history of this section of the code. Mr. Schlechte of the Legislative Council and Mr. Greenley, former director of the Department of Fish and Game, indicated to our staff that the intent of the Legislature was to not allow students to have multiple residencies such as one for tuition purposes and another for fishing and hunting.

I hope this is of assistance to you. If we can be of further help, please advise.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

October 3, 1985

Mr. E. Dean Tisdale
Idaho Transportation Department
STATEHOUSE MAIL

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Request for Definition of "Chauffeur"

Dear Mr. Tisdale:

Your letter of June 25, 1985 asks the attorney general to interpret the statutes in the Idaho Code that define the term "chauffeur." You state that confusion exists as to whether the term "chauffeur" covers "driver salesmen" who operate pop, beer and bread trucks, and drivers who own or lease their own trucks transporting exempt commodities such as sand and gravel, timber and agricultural products. The examples

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

cited present variations based on (a) whether the driver owns the vehicle; (b) whether the driver owns the items being hauled; and (c) whether the items hauled are “exempt” products.

A history of the pertinent statutes is helpful. Idaho Code section 49-347 states:

“Chauffeur,” wherever used in this chapter, shall be taken to mean any person operating motor vehicles on the public highway for hire.

Section 49-347 has remained unchanged since 1925. If it were the last word, there would be no difficulty in answering the questions posed by your letter. This statute is all-encompassing. It draws no distinction between those who drive their own vehicles and those who drive vehicles owned by another. Nor does it distinguish between types of goods hauled. Under its plain language, *any person* who operates a motor vehicle on the public highway for hire is a “chauffeur.” However, the compiler’s notes accompanying the statute observe that, “This section is probably superseded by § 49-303(c).” It is our opinion that the compiler’s note is correct.

Section 49-303(c) was enacted in 1935. In its original version, “chauffeur” was defined as:

Every person who is employed for the principal purpose of operating a motor vehicle and every person who drives a motor vehicle while in use as a public or common carrier of persons or property.

This definition pulls back from the all-encompassing wording of the 1925 statute by drawing several distinctions. Under the 1935 definition in §§ 49-303(c), one is a “chauffeur” if one meets either of two conditions. The first condition stresses the driver’s employment status. In order to be a chauffeur, a person must be employed for the principal purpose of operating a motor vehicle. It thus appears that a self-employed operator might not qualify. Second, regardless of ownership or employment, a person engaged in public or common carriage is a chauffeur. It thus appears that private hauling might not result in chauffeur status.

Both of these readings are reinforced by subsequent amendments to section 49-303(c).

Chauffeur. — Every person who is employed *by another* for the principal purpose of driving a motor vehicle and every person who drives a motor vehicle while in use as a public *contract* or common carrier of persons or property.

The italic words were added in 1951. The first condition now makes clear the legislative intent to distinguish between those who are self-employed and those who are employed *by another*. It is only the latter who are chauffeurs.

Second, the terms “contract” and “common” carrier are terms of art coined by the same 1951 legislature in its revision of the Motor Carrier Act in the Public Utilities Law, ch. 8, title 61. These terms are distinguished from another term of art coined in 1951, viz., “private” carrier. Every person who engages in contract or common car-

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

riage, regardless of ownership or employment status, is a chauffeur. These two terms are defined at Idaho Code §§ 61-801(f) and (g) as follows:

f. The term “common carrier” means any person, which holds itself out to the general public to engage in the transportation by motor vehicle in commerce in the state of Idaho of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes.

g. The term “contract carrier” means any person which, under individual contracts or agreements, engages in the transportation, other than transportation referred to in paragraph (h), by motor vehicle of passengers or property in commerce in the state for compensation.

By contrast, a “private carrier” was defined by the 1951 legislature in Idaho Code § 61-801(h) as:

[A]ny person not included in the terms “common carrier” or “contract carrier” who or which transports in commerce in the state by motor vehicle property of which such person is the owner, lessee, or bailee, when such property is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise.

Thus, as matters stood for three decades after the 1951 amendment to section 49-303(c), the extent of the term “chauffeur” was clear. The term covered “every person” who was employed by another for the principal purpose of driving a motor vehicle, *regardless of the type of carriage engaged in*. It also covered “every person” engaged in common or contract carriage, *regardless of the status of ownership of vehicle or goods*.

The story does not end there. In 1982, the Idaho Legislature enacted H.B. No. 645, “repealing sections 49-301 through 49-306, Idaho Code” and “amending ch. 3, title 49, Idaho Code, by the addition of a new section 49-301, Idaho Code, to provide definitions.” Idaho Sess. Laws, ch. 95, p. 185.

As a result of the 1982 amendments, section 49-301(2) of the Idaho Code now defines “chauffeur” as:

a person who is employed by another for the principal purpose of driving a motor vehicle and a person who drives a motor vehicle while in use as a public contract or common carrier of persons or property.

The new definition poses a problem. Under section 49-303(c), as it existed from 1951 to 1982, it was clear that every person employed by another primarily to drive a motor vehicle and every person engaged in common or contract carriage was a chauffeur. The plain language of the statute — “every person who . . . and every person who . . .” — left no doubt that a person was a chauffeur who met *either* of these two conditions. The wording of the new definition — “a person who . . . and a person who . . .” — makes it possible to argue that one must meet *both* conditions in order to be a chauffeur. Under this reading, a person would not be a chauffeur unless he or she was

both employed by another *and* engaged in common or contract carriage. In short, anyone who owned his or her own rig would be exempt from “chauffeur” status, even though engaged in common or contract carriage for compensation on the public highways of the state of Idaho.

It is our opinion that the legislature did not intend this result by its amendment of Idaho Code § 49-303 in 1982. For one thing, the language of the amendment itself does not require such a reading. The new definition does not identify a single “person” and then enumerate two conditions to be met. Rather, the statute identifies two conditions under either of which “a person” shall be a chauffeur.

More importantly, there is no indication that the 1982 legislature intended to work any significant change in the definition of “chauffeur” by its amendments to section 49-303. The purpose of the 1982 amendments was to “transfer the administration of certain functions from the Department of Law Enforcement to the Idaho Transportation Department.” Idaho Sess. Laws, ch. 95, p. 185. The result was a complete recodification of statutes spread throughout titles 40, 49, 61 and 67 of the Idaho Code. Significantly, the 1982 legislature did not announce, as did the 1951 legislature, that it was “amending section 49-303, Idaho Code, to *redefine* a chauffeur.” Chapter 183, Idaho Sess. Laws, 1951 (emphasis added).

Finally, as a matter of public policy, it is inconceivable that the 1982 legislature would have intended to exempt all those who own their own rigs from qualifying as a “chauffeur,” even though they might be engaged in common or contract carriage. The preamble to the 1951 statute states:

The legislature, being mindful that the operation of motor vehicles on the highways of the state of Idaho is a privilege and not a right, and that control of the granting, exercise and use of such privilege is necessary in order to insure that the public highways of the state shall be safe for the transportation of persons and property, reaffirms its belief that the privilege of operating motor vehicles on the public highways shall not be extended to persons not properly qualified to hold and exercise such privilege . . .

Id. The 1951 preamble merely “reaffirms” an existing policy. That policy of insuring the safety on public highways has not been abrogated by the amendment of the underlying statute in 1982.

We conclude, in direct response to the questions posed by your letter, that nearly all operators whose livelihood depends on the transportation of persons or goods must have a chauffeur’s license. This includes all contract and common carriers and their employees. Nothing in the statutory history leads us to conclude that carriage of “exempt” commodities (such as sand and gravel, timber or agricultural products) would serve to exempt the carrier from status as a chauffeur.

Among commercial haulers, the only persons exempt from chauffeur status under Idaho Code § 49-303(2) are those who are self-employed *and* who transport property of which they are the “owner, lessee, or bailee, when such property is for the purpose of sale, lease, rent or bailment, or in the furtherance of any commercial enterprise.”

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Idaho Code § 61-801(h). A bailee is one who bears the risk of loss if the goods being transported are lost or destroyed while in his or her possession.

In most instances, "driver salesmen" will be chauffeurs. Again, the only exception would be for a driver salesman who was self-employed *and* who was the owner, lessee or bailee of the goods being transported.

I hope this has answered the questions posed by your letter. If you need further information, please contact me.

Sincerely,

JOHN J. McMAHON
Chief Deputy Attorney General

JJM:cjm

October 21, 1985

The Honorable Larry Harris
Idaho State Representative
1925 Montclair Drive
Boise, ID 83702

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Dear Representative Harris:

You have asked whether Idaho Code §§ 20-413 and 414 prohibit the sale of inmate manufactured goods to retail or wholesale establishments within the state. It is our conclusion that these two sections of the code do not have that effect.

These two provisions of the code are part of the Correctional Industries Act adopted in 1974 by the Idaho Legislature. Common rules of statutory construction provide that these two sections should, if possible, be construed together in a rational and harmonious manner. Your constituent has interpreted these sections inconsistently in reliance upon the title of Section 413. However, titles of code sections are for guidance only and are not substantive law.

It is our opinion that the intent of the legislature in enacting the law in this fashion was to avoid a conflict with federal law which generally forbids the transportation of inmate manufactured goods through interstate commerce, with certain exemptions. See 18 U.S.C. 1761. This opinion is supported by a close reading of the two sections in question. Idaho Code § 20-413 authorizes the use of inmate labor for the production and manufacture of items for sale to and use by government agencies, non-profit or-

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

ganizations, public uses, and to retail or wholesale establishments within the state. Idaho Code § 20-414 mandates that these same products must be disposed of to public and non-profit entities "*except as allowed by the preceding section (Idaho Code § 20-413)*" (emphasis added). It is our conclusion, therefore, that the legislature authorized Correctional Industries to sell inmate made goods to governmental and non-profit institutions wherever located, and retail and wholesale establishments within the state. This approach was taken to avoid potential conflicts with federal law.

As you know, this matter has also been under review by the local United States Attorney. Our analysis does not cover the issue of under what circumstances and authority inmate made goods leave Idaho for other states. If we can be of further assistance, please advise.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK:tg

November 14, 1985

Mr. Bruce Balderston
Legislative Auditor
STATEHOUSE MAIL

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Children's Trust Account

Dear Bruce:

This is in response to the questions which Steve Keto asked you regarding the Children's Trust Account.

1. Is it correct to assume the revenue will be deposited with the State Treasurer who will be responsible for its proper investment and for posting any earned interest to the account?

The State Treasurer invests the idle funds in the account. Interest earnings after investment expenses will be paid to the account. Idaho Code § 67-1210 provides in pertinent part:

It shall be the duty of the State Treasurer to invest idle monies in the state treasury, other than monies in public endowment funds

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Since the idle funds are trust funds other than public endowment funds, the funds are invested by the State Treasurer. Idaho Code § 67-1210 also provides, as to such accounts, that the Treasurer will charge the account a fee equal to $\frac{1}{4}$ of 1% per year on the average daily balance of the account to cover the Treasurer's investment expenses. The balance of interest earnings will be paid to the account.

Questions 2 and 3 are related and are discussed together. The questions are:

2. It appears the board's chairman, or its designee has the ultimate authority to expend funds in accordance with the purposes specified in the bill. Does this mean we must process expenditures which are authorized by the board but may not be approved by the department director?
3. The department's duties relative to the management and accounting of the account seem to be subject to the direction of the board. Should the financial affairs of the board be subject to the same procedures and accountability required for other department units?

Idaho Code §§ 39-6001 through 39-6005 clearly give to the Children's Trust Account Board a authority to administer the account and discretion in determining which contracts for service programs to fund and the manner in which those contracts will be structured within the statutory guidelines established in those sections. Idaho Code § 39-6007(4) provides:

Disbursements of monies from the account shall be on the authorization of the children's trust account board or a duly authorized representative of the board.

The Department's duties and authority with regard to the Children's Trust Account are set forth in Idaho Code § 39-6008 which provides:

The Department of Health and Welfare under the direction of the children's trust account board shall be responsible for the management and accounting of monies expended from the children's trust account.

Thus, the Department's responsibility is to see that expenditures are managed and accounted for properly in accordance with the requirements imposed by law. Presumably, this responsibility was placed with the Department since the appointed board would not have sufficient familiarity with state expenditure and accounting requirements to effectively carry out this function on its own.

Therefore, it appears that all discretionary powers and duties regarding the Children's Trust Account have been delegated to the Board. The Department is responsible to see that expenditures are managed and accounted for in accordance with the requirements imposed by law.

For example, if the Board entered into a contract to establish a service program, the Department would have no authority to refuse to process expenditures for the program on the basis that a different program would be better or that a different contract

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

would be preferable. The Department's responsibility would be limited to determining that the expenditures called for are properly processed and accounted for consistent with legal requirements for expenditure of state funds.

4. Does the Department have the authority to assess indirect charges to the account?

As noted above, the Department's only statutory responsibility regarding the Children's Trust Account is the management and accounting for money expended from the account. To the extent the Board desires additional goods or services to be provided by the Department, an interagency billing agreement could be entered into pursuant to Idaho Code § 67-3516.

If you have any questions regarding this letter, please contact me.

Sincerely,

DAVID G. HIGH
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

DGH:jas

cc: Mr. Steve Keto, Administrator
Division of Management Services
Department of Health and Welfare

December 19, 1985

Mr. Reginald R. Reeves
Denman & Reeves
P.O. Box 1841
Idaho Falls, ID 83401

**THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE**

Re: Child Support/Garnishment

Dear Mr. Reeves:

The Department of Health and Welfare's Bureau of Support Enforcement has asked us to respond to your letter of October 30, 1985, regarding garnishments in child support cases. You advise that some local prosecutors in your area are requiring

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

an application or motion to the court as a condition precedent to the issuance of a "continuing" garnishment directed to the employer of a parent who is delinquent on his or her support obligation. You question whether such a motion is necessary.

As you correctly indicate, Idaho Code § 11-103(b) imposes no requirement that an application be addressed to the court in order for a child support garnishment to be deemed continuing in nature. That statute provides in relevant part:

Where an execution or a garnishment against earnings or unemployment benefits for a delinquent child support obligation is served upon any person or upon the state of Idaho and there is in possession of such person or the state of Idaho any such earnings or any unemployment benefits of the judgment debtor, the execution and the garnishment shall operate continuously and shall require such person or the state of Idaho to hold the nonexempt portion of earnings or unemployment benefits of each succeeding earnings or unemployment benefits disbursement interval until released by the sheriff at the written request of the judgment creditor or until the judgment for child support debt . . . is discharged or satisfied in full; . . .

The quoted language renders these garnishments automatically continuous. The statute does not require any special procedure before any court.

You indicate that some local officials have interpreted § 8-509(b) as imposing a requirement that a written motion be directed to the court and an order obtained from the clerk before *any* garnishment (including those for child support directed to employers) can be deemed continuing in nature. We disagree with this interpretation.

Subsection (b) was added to § 8-509 by the legislature in 1985. That paragraph states in part:

When the garnishee is the employer of the judgment debtor, the judgment creditor, *upon application to the court*, shall have issued by the clerk of court, a continuing garnishment directing the employer-garnishee to pay to the sheriff such future monies coming due to the judgment debtor as may come due to said judgment debtor as a result of the judgment debtor's employment. . . . (emphasis supplied).

This section does seem to contemplate a formal motion directed to a court before a "continuing" garnishment may issue. The question thus becomes whether § 8-509(b) can be reconciled with § 11-103(b) or whether the two provisions are in conflict.

If there is an irreconcilable conflict between § 11-103(b) and § 8-509(b), the most recent enactment, § 8-509(b), would govern. *See, Rydall v. Glauner*, 83 Idaho 108, 113, 357, P.2d 1094, 1097 (1961); *St. v. Mayer*, 81 Idaho 111, 116, 338 P.2d 270, 273 (1959). However, it is a well recognized rule of statutory construction that where two statutes which seem to address the same subject matter can be reconciled and construed so as to give effect to both, it is the duty of the courts to so construe them. *See, St. v. Roderick*, 85 Idaho 80, 84, 375 P.2d 1005, 1007 (1962); *Idaho Wool Marketing Ass'n v. Mays*, 80 Idaho 365, 371, 330 P.2d 337, 340 (1958); *Storeth v. St.*, 72 Idaho 49, 51, 236 P.2d 1004, 1005 (1951).

INFORMAL GUIDELINES OF THE ATTORNEY GENERAL

Sections 8-509(b) and 11-103(b) are only inconsistent if the former statute is construed to apply to garnishments for child support obligations directed to the employer of a delinquent parent. If faced with this question, a court could either rule that § 11-103(b) had been impliedly modified by § 8-509(b), or interpret the statutes so as to remove any contradiction. The latter is the preferred course of action. *St. ex rel. Good v. Boyle*, 67 Idaho 512, 523, 186 P.2d 859, 866 (1947); *Golconda Lead Mines v. Neill*, 82 Idaho 96, 101, 350 P.2d 221, 223 (1960).

The clearest means of resolving any conflict would be to limit the application of § 8-509(b) to all garnishments except those specifically addressed in § 11-103(b). Section 8-509 could simply be deemed irrelevant to child support garnishments since that subject matter is covered by § 11-103(b).

We believe that § 8-509(b) must be read in the preexisting statutory context and, therefore, be viewed as applying solely to those garnishments which are not otherwise rendered automatically continuing by prior law. Through this construction, a conflict between the provisions can be avoided and both statutes can continue to coexist. It is, therefore, our conclusion that the "application to the court" cited in § 8-509 is not necessary in child support enforcement efforts aimed at a delinquent parent's employer; this latter class of cases is addressed by § 11-103(b) and garnishments falling within the scope of that section are automatically deemed continuing.

Thank you for your inquiry. If you have any further questions, please do not hesitate to contact us.

Yours truly,

P. MARK THOMPSON
Deputy Attorney General
Chief, Administrative Law and
Litigation Division

PMT:jas

cc: Deborah Kristal
Child Support Enforcement
Department of Health & Welfare

Topic Index
and
TABLE OF STATUTES CITED
SELECTED INFORMAL GUIDELINES
1985

1985 SELECTED INFORMAL GUIDELINES INDEX

TOPIC	DATE	PAGE
ADMINISTRATIVE PROCEDURE ACT		
Fees intended to reimburse costs incurred by a district board of health are within the definition of rulemaking for the purposes of Idaho Code § 39-416 and the Administrative Procedure Act.	4-12-85	114
ALCOHOLIC BEVERAGES		
Without further legislative guidance, the scope of exceptions under Idaho Code § 23-1023 remains unclear.	1-16-85	82
AUDITORIUM DISTRICTS		
The Greater Boise Auditorium District's support of a "Convention and Visitor's Bureau" is a lawful expenditure since it promotes the function and purpose of the district.	7-17-85	130
The authority of special purpose taxing districts is granted by the legislature and not by the formation petition. A district may conduct any statutorily authorized activity until it is dissolved by the legislature or by election.	7-17-85	130
CITIES		
Proposed House Bill No. 73, which permits resort city residents and city governments to act in concert to impose sales taxes, is constitutional.	2-11-85	96
CLEAN INDOOR AIR ACT		
Meaning of the term "public place" as used in the proposed Clean Indoor Air Act, House Bill 65.	2-12-85	101
CHILDREN'S TRUST ACCOUNT		
Idle funds in the Children's Trust Fund are invested by the State Treasurer and interest earned thereon is paid to the fund account.	11-14-85	145
Disbursement of trust funds is in the sole discretion of the Children's Trust Fund Board, the Department of Health and Welfare is responsible only for management and accounting of monies so disbursed.	11-14-85	145

TOPIC	DATE	PAGE
COMMISSION ON THE ARTS		
Proposed Commission on the Arts rule which conditions the grant of funds upon the content of the material presented may be an unconstitutional infringement of first amendment rights.	5-24-85	120
CORRECTIONS		
Correctional industries may sell inmate made goods to non-profit institutions wherever located, and to retail and wholesale establishments within the state.	10-21-85	144
COUNTIES		
County administered programs affect only unincorporated areas of the county and thus have no effect within municipalities. (To Rep. Hooper).	2-4-85	95
Proposed Watercraft Licensing Ordinance would not be in conflict with state law so long as it is reasonably related to the protection of the public health, safety and general welfare or amounts to a rental of county property.	4-26-85	116
DAY CARE		
Legality of proposed Day Care Licensing Act, House Bill 94. (To Sen. Bray). See Counties (To Rep. Hooper).	2-4-85	95
EDUCATION		
Procedures for discontinuing a school are governed by Idaho Code § 33-514.	3-25-85	113
ELECTIONS		
The term "state candidate," as used in Senate Bill 1105, includes only candidates for state-wide political office and does not include "district candidates" such as those seeking election to the Idaho Legislature.	2-26-85	109
ENDOWMENT LANDS		
Idaho Admission Bill does not preclude recovery of timber sale administrative expenses from endowment trust proceeds, but an Idaho Supreme Court decision may prevent such practice.	1-10-85	77
FISH AND GAME		
Idaho residents may lose resident hunting and fishing privileges while absent from state.	9-18-85	139

TOPIC	DATE	PAGE
FIRE MARSHAL		
Fire Marshal has authority to carry concealed weapon during arson investigations.	8-29-85	137
GAMBLING		
House Bill 228 is a constitutional exercise of power by the legislature to criminalize the use of slot machines for gambling purposes.	2-26-85	107
HEALTH AND WELFARE		
Proposed restrictive covenant banning "group homes" from residential neighborhoods is most likely unconstitutional and unenforceable on public policy grounds.	1-22-85	85
Issuing a continuing garnishment to employer of parent delinquent on support obligation.	12-19-85	147
LAW ENFORCEMENT		
Constitutional rights of due process are not violated when police officers issue summons by ticketing illegally parked vehicles.	3-4-85	110
Duty of police officers to enforce handicap parking privileges applies to private as well as public parking areas.	3-4-85	110
No requirement of parental consent before evidentiary blood sample is drawn from minor.	6-3-85	127
LIQUOR DISPENSARY		
State Liquor Dispensary may remain liable for remaining financial obligation of broken lease.	2-2-85	89
MOTOR VEHICLES		
Only a commercial hauler who is self-employed and who is the owner, lessee or bailee of the goods being transported is exempt from chauffeur status under Idaho Code § 49-303 (2).	10-3-85	140
PERSONNEL COMMISSION		
Salaries are adjusted at the time a reclassification takes effect, and an employee whose position is reclassified upward can bring a grievance if the agency does not grant a corresponding pay increase.	2-19-85	102

TOPIC	DATE	PAGE
REVENUE AND TAXATION		
Proposed House Bill No. 73, which permits resort city residents and city governments to act in concert to impose sales taxes, is constitutional.	2-11-85	96
Differential licensing fees which discriminate between residents and non-residents may violate constitutional guarantee of equal protection of the law.	4-26-85	116
WRONGFUL BIRTH		
Proposed House Bill 120 which bars a cause of action for wrongful birth, is not unconstitutionally broad or vague. ..	2-21-85	104

1985 LEGAL GUIDELINES **CITATIONS FROM IDAHO CONSTITUTION**

ARTICLE & SECTION	DATE	PAGE
ARTICLE I		
§ 2	2-4-85	.... 91
§ 13	4-26-85	.... 116
ARTICLE II		
§ 1	7-17-85	.... 130
ARTICLE III		
§ 20	2-26-85	.... 107
ARTICLE IX		
§ 3	1-10-85	.... 77
§ 4	1-10-85	.... 77
§ 8	1-10-85	.... 77
ARTICLE XII		
§ 2	2-4-85	.... 91
§ 2	4-26-84	.... 116
§ 2	2-4-85	.... 95
Idaho Admission Bill		
§ 4,5,6,8,10,11,12	1-10-85	.... 77

1985 INFORMAL GUIDELINES IDAHO CODE CITATIONS

CODE	DATE	PAGE
6-801 et seq.	2-21-85	.... 104
8-509	12-19-85	.... 147
8-509(b)	12-19-85	.... 147
11-103(b)	12-19-85	.... 147
18-111	3-4-85	.... 110
18-801 et seq.	8-29-85	.... 137
18-1502(a)	1-16-85	.... 82
18-3302	8-29-85	.... 137
Title 18, chapter 38	2-26-85	.... 107
18-8002	6-3-85	.... 127
18-8002(?)	6-3-85	.... 127
18-8002(6)	6-3-85	.... 127
18-8004	6-3-85	.... 127
19-310	8-29-85	.... 137
19-601	8-29-85	.... 137
19-603	8-29-85	.... 137
19-5101(c)	8-29-85	.... 137
20-413	10-21-85	.... 144
20-414	10-21-85	.... 144
22-2918	7-17-85	.... 130
23-603	1-16-85	.... 82
Title 23, chapter 9	1-16-85	.... 82
23-929	1-16-85	.... 82
23-949	1-16-85	.... 82
Title 23, chapter 10	1-16-85	.... 82
23-1013	1-16-85	.... 82
23-1023	1-16-85	.... 82
Title 23, chapter 13	1-16-85	.... 82
23-1334(a),(b),(d)	1-16-85	.... 82
25-2119	2-21-85	.... 104
25-2401 et seq.	4-26-85	.... 116
25-2402	7-17-85	.... 130
31-870	4-26-85	.... 116
31-2202(2)	3-4-85	.... 110
32-101	6-3-85	.... 127
33-511	3-25-85	.... 113
33-2104	7-17-85	.... 130
Title 34, chapter 7	2-26-85	.... 109
34-705	2-26-85	.... 109
34-706	2-26-85	.... 109
34-715	2-26-85	.... 109
36-202(r)(l)	9-18-85	.... 139
39-414	4-12-85	.... 114
39-416	4-12-85	.... 114

CODE	DATE	PAGE
Title 39, chapter 37	6-3-85	.... 127
39-3701	6-3-85	.... 127
Title 39, chapter 38	6-3-85	.... 127
39-4303	6-3-85	.... 127
39-4601 et seq.	1-22-85	.... 85
39-4604(h)	1-22-85	.... 85
39-4701 et seq.	1-22-85	.... 85
39-A4701 et seq.	1-22-85	.... 85
39-6001 et seq.	11-14-85	.... 145
39-6007(4)	11-14-85	.... 145
39-6008	11-14-85	.... 145
41-253 et seq.	8-29-85	.... 137
41-254	8-29-85	.... 137
41-255	8-29-85	.... 137
41-257	8-29-85	.... 137
Title 49, chapter 3	10-3-85	.... 140
49-301	10-3-85	.... 140
49-301(2)	10-3-85	.... 140
49-303	10-3-85	.... 140
49-303(c)	10-3-85	.... 140
49-347	10-3-85	.... 140
49-594	3-4-85	.... 110
49-698	3-4-85	.... 110
49-698(1)	3-4-85	.... 110
49-698(2)	3-4-85	.... 110
49-698(5)	3-4-85	.... 110
49-763	2-21-85	.... 104
49-1401	2-21-85	.... 104
Title 49, chapter 32	4-26-85	.... 116
49-3201 et seq.	4-26-85	.... 116
49-3229	4-26-85	.... 116
49-3402	3-4-85	.... 110
49-3402(2)	3-4-85	.... 110
49-3406	3-4-85	.... 110
49-3406(1)	3-4-85	.... 110
49-3406(2)	3-4-85	.... 110
50-101	7-17-85	.... 130
50-209	3-4-85	.... 110
50-1043 et seq.	2-11-85	.... 96
50-1706	7-17-85	.... 130
58-140	1-10-85	.... 77
58-301	1-10-85	.... 77
58-416	1-10-85	.... 77
58-1104	1-10-85	.... 77
Title 61, chapter 8	10-3-85	.... 140
61-801(f),(g),(h)	10-3-85	.... 140
67-1210	11-14-85	.... 145
67-3516	11-14-85	.... 145

CODE	DATE	PAGE
67-4703	7-17-85	.... 130
Title 67, chapter 49	7-17-85	.... 130
67-4901	7-17-85	.... 130
67-4902	7-17-85	.... 130
67-4904	7-17-85	.... 130
67-4912	7-17-85	.... 130
67-4912(m)	7-17-85	.... 130
67-4912(o)	7-17-85	.... 130
67-4917A et seq.	2-11-85	.... 96
67-4918	7-17-85	.... 130
67-4919	7-17-85	.... 130
67-4930	7-17-85	.... 130
67-5309A(1)	2-19-85	.... 102
67-5605	5-24-85	.... 120
Title 67, chapter 65	2-4-85	.... 91
67-6530 et seq.	1-22-85	.... 85
72-201	2-21-85	.... 104
IDAHO RULES		
Idaho Infraction Rule 5	3-4-85	.... 110
Idaho Infraction Rule 5(a)	3-4-85	.... 110
Idaho Infraction Rule 5(c)	3-4-85	.... 110

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
ADMINISTRATION		
Treatment of group insurance surplus and deficit.	75-3	8
Legality of lease-purchase contracts by states.	75-51	186
Legality of Multiple Awards Contracts.	75-50	253
ADMINISTRATIVE PROCEDURE ACT		
Hearings by Department of Labor and Industrial Services not subject to A.P.A.	75-9	27
Revocation or amendment of administrative rules and regulations previously approved by legislature.	78-12	44
Promulgation of IDAPA 09.30.055 was proper exercise of Department of Employment rulemaking authority.	84-11	93
AGRICULTURE		
Slaughter and sale of beef.	75-73	259
Definition of Ice Cream Factory.	76-63	270
Interest from Rural Rehabilitation Loan Fund.	78-3	12
Inclusion of sale or consumption of animals in determining what is agriculturally produced for income tax purposes. . .	80-8	37
Establishment of fees for Grade A Dairy Inspections.	81-4	67
AMBULANCES		
Public information status of information obtained by public ambulance service in regard to patients.	77-52	250
BANKS		
Legality of automated tellers.	75-21	61
City must bank within city limits.	75-24	72
Public bodies required to deposit money with depository located within the depository unit, FDIC insurance limits notwithstanding.	75-56	204

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Legality of stop payment on cashier's check.	76-51	203
Banks can accept deposits after initial refusal.	80-17	88
Remedies for collection of dishonored checks in Idaho Code §§1-2301A and 28-3-510A are mutually exclusive.	84-6	54
Unclaimed Property		
Procedures for and authority to take possession of property recovered from safety deposit boxes or safe-keeping repositories of national banks closed during 1930's now in custody of Comptroller of Currency.	83-10	91
Unclaimed Property Act — Finance, Department of — Bank Act, Records — Central Records Management.	85-6	38
BONDS		
Bond election ballot statement must be sufficiently definite to apprise voters of purpose and scope of improvements contemplated.	76-7	53
Impermissible debt and liability incurred under lease-purchase agreement and issuance of bonds on future estimated assessed property value.	79-22	137
CITIES		
City must bank within city limits.	75-24	72
Extent of Home Rule powers of Idaho cities.	76-3	7
Authorization of mayor to break tie vote of council.	78-25	101
Ballot proposition guidelines for budget limitation override.	79-12	70
Definition of qualified voters for petition to disincorporate a city.	79-23	146
City appointment of police officers statutorily authorizes them to enforce state law within city boundaries.	84-4	35
Cities have right to house in county jails prisoners charged with or convicted of violations of city ordinances or state motor vehicle laws within city limits.	84-4	35

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
COMMISSIONS AND BOARDS		
Gubernatorial appointment to fill vacancy.	75-16	50
A board's dealing with a member of the board may constitute breach of fiduciary duty.	75-25	73
Relation of Human Rights Rules and Regulations to concept governing Human Rights Commission. Status of the Commission as a 706 deferral agency.	78-11	39
Legislative confirmation of Pacific Northwest Electric Power and Conservation Planning Council member.	81-3	59
CORPORATIONS		
Professional corporations may not engage in activities unrelated to professional services; may own realty or invest funds.	77-23	151
Fees for Financing Statements under U.C.C.	77-46	233
Mutual Savings Bank, as for-profit corporation, has no authorized stock and is charged minimum corporation fee. ...	77-53	253
Names of members of professional service corporation must appear in corporation name. Assumed business name properly filed in county may be used by corporation.	77-62	299
Architects and engineers cannot incorporate to provide professional services of both professions.	78-29	117
Corporation can create common stock with restricted voting privileges.	78-33	130
CORRECTIONS		
Bid process in awarding contract to Idaho Board of Corrections.	78-2	7
Probation conditional upon performance of non-compensated public service. Coverage/liability of probationer.	78-17	63
Courts' power limited to imposing either maximum or fixed term sentence, not hybrid of both.	79-9	52
Dispensing of prescribed medications to inmates by correctional officers.	79-18	112

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Definition of word "facility." State Board of Corrections cannot contract with non-government facilities to domicile prisoners.	80-15	74
Idaho courts have no authority to hold preliminary hearings on allegations of parole violations under the Uniform Act for Out-of-State Parole Supervision.	80-29	154
Relief from sentence may be granted a defendant either during or after completion of probation.	80-26	139
Deadly force may be used to suppress a riot if reasonable and necessary.	81-9	93
Transfer of Prison Industry Betterment Fund to exclusive control of Correctional Industries Commission constitutionally prohibited.	82-2	49
Fixed life sentences not subject to eligibility for parole. Time of parole eligibility for persons sentenced to life imprisonment between July 1, 1971, and July 1, 1980.	82-9	107
Transfer of Prison Industry Betterment Fund to exclusive control of Correctional Industries Commission constitutionally prohibited.	83-4	56
Expense of transporting inmates from prison to county where inmate's attendance in court is required.	83-11	94
Grant of parole to inmate requires affirmative vote of majority of Commission of Pardons and Parole.	83-13	69
Commission of Pardons and Parole has broad constitutional power to commute and to pardon. Power to grant parole is created by statute.	84-8	75
COUNTIES		
County commissioners to pay court filing fee.	75-2	2
County required to have zoning commission.	75-18	53
County must collect school district levy.	75-67	241
Powers granted to cities and counties.	76-3	7
Board of County Commissioners may hire ministerial and clerical employees paid from board budget.	76-8	57

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Legality of using county equipment for private work.	76-13	73
Legality of providing and funding temporary housing sites for disaster emergency.	76-25	109
Responsibility of prosecuting attorney to provide legal services for county and county boards. Right to hire outside counsel.	76-42	174
Validity of inducements to obtain medical doctors.	77-4	76
Duties of County Boards of Equalization.	77-50	246
"In lieu" federal funds may be transferred to other governmental districts within county.	77-68	323
Use of county equipment by private persons or firms.	79-10	56
Indebtedness or liability incurred by "hold harmless" clause.	79-13	77
Indebtedness or liability incurred by long-term lease or lease-purchase agreement.	79-20	122
Authority of county commissioners to change boundaries and to create new highway district.	80-5	18
Emergency fiscal powers available to local governments.	80-16	80
Counties must pay costs of enforcing state statutes, including cost of extraditing and housing prisoners charged with violations of state law by any enforcement official of county or of any city within county.	84-4	35
 DISTRICTS		
Fire Protection		
Discretion to levy tax upon lands, improvements or personal property in a uniform manner.	77-48	237
Requirements relative to collective bargaining and compulsory arbitration.	78-14	55
Highways		
Authority of highway districts to impose traffic regulations.	79-6	38
Authority of county commissioners to change boundaries of and create new highway district.	80-5	18

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Local Improvement		
Impact of one-percent initiative and budget freeze limitations on local improvement districts.	79-7	41
Sewer		
Definition of taxing power — Mortgage of property prohibited — Bonding requirements.	77-12	110
Assessment of additional monies in sewer use fee to maintain sewage treatment plant.	80-9	44
Uniform Plumbing Code does not apply directly to Central Orchards Sewer District.	80-22	112
EDUCATION		
Legality of state financed kindergartens.	75-8	24
Election qualifications — school district elections.	75-26	79
Kindergarten attendance not included in computing district's average daily attendance.	75-39	123
State Board of Education controls junior colleges.	75-59	214
County must collect school district levy.	75-67	241
Conditions which justify search for drugs by high school administrator of student, locker, car, or school grounds.	76-6	49
Powers of Department of Labor & Industrial Services to enforce building codes for schools and state buildings.	76-9	65
Consent of juvenile to be searched for criminal misconduct on school grounds.	76-32	135
Enrollment of non-resident students.	76-54	215
Requirement of University of Idaho to allot all appropriated and non-appropriated revenue. Power of University to spend revenues without approval of Board of Examiners or State Auditor.	76-65	276
Legislative prohibition against state ad valorem tax levies while sales tax is in effect.	77-63	303
Requirement of all state educational funds to be handled through State Treasurer.	77-69	324

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Educational institutions not exempt from requirements of Idaho Outfitters and Guide Act.	78-34	135
Local school district in which state institution is located is responsible for educating only those institutionalized children whose guardian resides within its boundaries.	80-25	131
Investment of surplus or idle money under Public Depository Law permissible subject to limitations.	82-4	66
School district's contractual obligations to teachers.	82-13	129
School Board has responsibility to ensure that compulsory attendance law requirements are met. Expulsion as habitual truant not needed for proceeding to enforce law.	83-12	101
Rule allowing health care professionals to work off portion of state educational loan obligation by service in Idaho does not impose involuntary servitude on borrower and is constitutional.	84-1	21
ELECTED OFFICIALS		
Executive Order #77-11 re comprehensive plan for data processing is applicable to elective offices.	78-32	126
Auditor		
Legality of deferred compensation.	76-16	82
No constitutional bar to legislatively created office conducting duties similar to State Auditor.	82-1	46
Examiners, State Board of		
Power of university to spend revenues without approval of Auditor or Board of Examiners.	76-65	276
Exemption of state judiciary and staff from statutory travel and per diem allowances.	78-45	193
State Board of Examiners, not Governor, has authority to reduce expenditures legislatively authorized.	80-20	102
Governor		
Appointment to fill vacancy at Pea and Lentil Commission.	75-16	50
Voting member of Land Board.	75-53	196

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Legality of Governor nominating or appointing lay person as Justice of Idaho Supreme Court.	76-24	105
Legality of purchase of aircraft by Governor's office.	76-34	142
Appointment of and resignation of Governor and Lieutenant Governor.	77-1	51
Presentation issue re H.B. 480. Bill as passed by Legislature controls.	78-18	67
Creation, appointment and term of new District Judgeship.	78-21	81
Term of office of appointed P.U.C. Commissioner not reconfirmed.	79-3	26
Legislature must reconsider vetoed bills.	80-11	55
Governor's authority to use state resources to meet emergencies.	80-16	80
Governor may not transfer state monies from one fund to another.	80-19	96
State Board of Examiners, not Governor, has authority to reduce expenditures legislatively authorized.	80-20	102
Prudent Man Investment Rule controls all assets of state in fiduciary capacity.	82-7	82
Appointment of member of judiciary to Children's Trust Account would violate separation of powers clause of Idaho Constitution.	85-5	31
Secretary of State		
Secretary of State prohibited from selling Idaho Code Books.	76-30	130
Legality of stop payment on cashier's check.	76-51	203
Treasurer		
Treatment of group insurance and deficit.	75-3	8
Disposition of Capitol Building Fund limited by Idaho Admission Bill.	75-48	175
Requirement of both spouses' signatures on back of tax refund warrants.	76-20	92

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Ability to enter into joint agreements with other taxing units as to investment of idle funds.	77-18	136
State Liquor Dispensary entitled to receive and retain interest on idle liquor funds from State Treasurer.	77-51	248
Rotary funds or rotary expense funds are not idle funds to be invested; they are specially reserved to pay daily expense. ..	77-61	297
Overdrafts in general account, interest and charges — State Deficiency Warrants — Fire suppression charges.	77-67	318
Requirement of all state educational funds to be handled through State Treasurer.	77-69	324
Interest from the Rural Rehabilitation Loan Fund.	78-3	12
State Treasurer lacks authority to sell or incur loss from sale of investments of “idle monies” prior to maturity.	78-43	183
Liability for transactions by Endowment Fund Investment Board.	79-8	46
Banks can accept deposits after initial refusal.	80-17	88
Investment of surplus or idle money under the Public Depository Law permissible subject to limitations.	82-4	66
Prudent Man Investment Rule controls all assets of state in fiduciary capacity.	82-7	82
ELECTIONS		
Propriety of taxing unit spending funds to promote bond election.	75-6	17
Election qualifications — school district elections.	75-26	79
Sunshine Act — “Political Committee” defined — Certification of political treasurers.	75-28	84
Elector’s registration cancelled for failure to vote for four years.	75-42	148
Legality of “Head to Head” statute — Election of state representatives.	75-68	244

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Bond election ballot statement must be sufficient to apprise voters of purpose and scope of improvement contemplated.	76-7	53
Votes required to recall an official appointed rather than elected.	76-10	67
Defining rules for candidates filing under one party name but winning enough write-in votes to qualify for general election ballot under another party name.	76-45	180
Recall elections. Appointment of successors if all officers on board recalled.	77-21	145
Definitions of terms under Sunshine Law. Contributions and expenditures under Sunshine Law.	77-29	172
Cities which have adopted state voter registration may close registration five days prior to election.	78-55	266
Resignation and subsequent eligibility for re-appointment of magistrate.	78-24	96
Ballot proposition budget limitation override election.	79-12	70
Definition of qualified voters for petition to disincorporate a city.	79-23	146
 EMPLOYMENT		
Department of Employment		
Consideration of vacation and severance pay in determining unemployment tax and benefits.	76-60	247
Legislation required to change Public Employee Retirement System Act.	78-27	111
Clarification of employment of directors and staff of regional LEPC.	78-30	119
Promulgation of IDAPA 09.30.055 by director of Department of Employment — denying unemployment insurance benefits to employees of an educational institution between terms and during customary vacation and holiday recess periods — was proper exercise of authority under Idaho Employment Security Law.	84-11	93

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Employment Security Fund		
Statutes do not prohibit use of federal delay of draw down procedures for Employment Security Fund but practical problems make use of such procedures unavailable.	83-7	76
Social Security		
Payments made to employees due to illness or disability are separate from wages.	80-28	149
ENDOWMENT LANDS		
Conflict of interest.	75-25	73
State Board of Land Commissioners, not the beneficiaries, controls use of state endowment lands.	76-1	1
Provisions allowing investment of public funds in savings and loan associations do not apply to permanent endowment, state insurance or fireman's retirement funds.	80-18	92
Monies from 10% fund must be expended for capital improvements upon same endowment land from which monies were derived.	81-14	154
Prudent Man Investment Rule controls all assets of state in fiduciary capacity.	82-7	82
State Land Board may sell to state agencies trust lands without public notice or public auction.	82-10	110
To avoid violation of constitutional and land provisions, the special fund provided by Idaho Code § 58-140 should be consolidated in the agency asset fund so that interest will be accounted for separately for the benefit of the account.	85-3	14
Permanent endowment funds may be invested in money market mutual funds provided fund unconditionally guarantees full repayment of principal and interest and state does not directly or indirectly become stockholder in any association or corporation.	85-4	20
ENVIRONMENT		
Pollution control devices exempt from taxation — Land not exempt.	76-44	178
Authority of Health and Welfare or local government to implement mandatory motor vehicle emissions program.	78-42	178

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
FINANCE		
I.S.A. may apply to cooperative marketing associations. . . .	75-13	38
Adjustment on consumer loan limits.	76-2	5
Investment of surplus or idle money under Public Depository Law permissible subject to limitations.	82-4	66
Unclaimed Property Act — Bank Act — Central Records Management.	85-6	38
FISH AND GAME		
Legality of and procedure for proxy voting by commission members.	76-46	183
Policies regulating Fish and Game enforcement personnel.	77-58	280
Commission has authority to require submission of full fees for controlled hunt permits and tags with each application.	80-27	141
Department has no authority to concede jurisdiction over non-Indian fee lands or to require non-Indian landowners and hunters to purchase tribal hunting permits.	81-16	166
Exchange of lands by Fish and Game.	82-3	52
HEALTH AND WELFARE		
Tax Commission may obtain records from Bureau of Vital Statistics.	75-35	108
Appropriation to the Department of Social Services.	75-37	113
District health departments are state agencies subject to pur- chasing laws.	75-38	117
Protective custody prior to commitment.	75-61	219
Funds available for emergency housing.	76-25	109
Legality of residency requirements for medical assistance. .	76-52	209
Scope of ministerial fiscal duties concerning health districts.	76-61	263
Release of information by Tax Commission relating to sup- port and location of dependents.	77-43	224

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Authority of Health and Welfare or local government to implement mandatory motor vehicle emissions program.	78-42	178
Health and Welfare cannot enter into collective bargaining agreement with Idaho Services Employee Union.	80-6	21
Idaho Medicaid Plan should be amended to comply with recent court decisions and U.S. Department of Health and Welfare.	80-14	70
A.G. Opinion No. 80-14 updated and superseded (supra). .	80-30	174
Public disclosure of Medicaid cost and audit reports.	81-1	41
Department's authority to retain personnel and its legal responsibility to carry out statutory programs after budget cuts. .	81-13	125
Idaho Relative Responsibility Act is inconsistent with federal Social Security laws which prohibit state from requiring contribution for care of Medicaid recipients from relatives other than spouse or parent of minor.	84-7	67
HOSPITALS		
Hospital Board meetings and records.	75-7	22
Constitutionality of participation of church-related hospitals in Hospital Liability Insurance Trust.	78-20	74
HUMAN RIGHTS		
Relation of Human Rights Rules and Regulations to concept governing Human Rights Commission. Status of the Commission as a 706 deferral agency.	78-2	39
INDIANS		
Indians not eligible to participate in programs under U. S. Land and Water Conservation Act.	76-23	101
Taxation of cigarettes sold to non-Indians on reservation land. .	76-57	231
Department of Fish and Game has no authority to concede jurisdiction over non-Indian fee lands or to require non-Indian landowners and hunters to purchase tribal hunting permits. .	81-16	166
INITIATIVES		
Legality of amending State Constitution by initiative.	76-12	71

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
INSURANCE		
Treatment of group insurance surplus and deficit.	75-3	8
Insurers writing automobile liability insurance are members of joint underwriting association for medical malpractice insurance.	75-27	81
Medical Malpractice Insurance.	75-47	167
Idaho Broker — Counter signature provisions.	75-71	254
Adjustment of \$25,000 limit for Group Life Insurance debtors is subject to Consumer Price Index.	76-1	5
Brokers bond requirement does not apply to licensed brokers registered to firm.	76-26	113
Lending institution transacts business as insurer by entering into consumer service contracts.	78-10	34
Payment of health benefits through “self-funded” medical plan.	78-13	47
Constitutionality of three-year participation requirement proposed by Idaho Hospital Liability Insurance Trust.	78-20	74
Obligation of Idaho Life and Health Insurance Guaranty Association to certificate holders of insolvent “member insurer”.	78-35	140
See Motor Vehicles		
JUDICIAL		
Legality of lay person serving as Justice of Supreme Court if appointed by Governor.	76-24	105
Effective date of increased filing fees.	76-28	118
Required and discretionary appropriations to district court fund. Options if fund is insufficient.	76-33	138
Responsibility for District Court Fund.	76-49	198
Creation, appointment and term of new District Judgeship.	78-21	81
Resignation and subsequent eligibility for appointment of magistrate.	78-24	96

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Limitations to accumulated balances of district court funds.	78-36	145
Exemption of state judiciary and staff from statutory travel and per diem allowances.	78-45	193
Power to determine suitable facilities for district court and to administer District Court Fund.	79-2	21
Courts' power limited to imposing either maximum or fixed term sentence.	79-9	52
Authority and function of grand jury.	81-2	50
Fines and forfeitures levied as condition of withheld judgment for violation of local ordinance must be distributed by county auditor in accord with 10/90 statutory formula. ...	83-1	25
Court powers and duties in handling petitions filed under Youth Rehabilitation Act.	83-12	101
 LABOR AND INDUSTRIAL SERVICES		
Hearings by Department of Labor and Industrial Services not subject to A.P.A.	75-9	27
Powers of Department of Labor and Industrial Services to enforce building codes for schools and state buildings.	76-9	65
Legality of reciprocal interstate agreements under U.S. Constitution, Idaho Constitution and statutory law.	76-43	176
Certification of personnel to supervise installation of plumbing, heating and electrical systems in mobile homes. Preemption by federal regulations.	77-2	68
Requirement of safety inspection insignia on recreational vehicles. Reciprocal agreements between states.	77-3	74
Platoon commanders of municipal fire departments may be excluded from union membership.	77-8	90
Termination of Rehabilitation Division. Industrial accidents.	77-28	171
Dedicated fund divisions of Department of Labor and Industrial Services must go through statutory budgeting and appropriation procedures before expending dedicated funds. .	85-7	43

See Law Enforcement, Public Works

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
LAW ENFORCEMENT		
Issuance by phone of search warrants.	75-15	49
Right of private citizen to make arrest.	75-23	67
Lotteries defined and analyzed.	75-52	190
Protective custody prior to commitment.	75-61	219
“Felony Murder” Rule.	75-65	232
Sheriff not allowed extra fee. Service contract with city. ..	75-72	257
Sheriff entitled to charge for return of service on Notice of Claim from Small Claims Court.	76-17	85
Right of criminal defendant in misdemeanor to be represented by non-lawyer.	76-21	94
Consent of juvenile to be searched on school property for criminal misconduct.	76-32	135
Responsibility of prosecuting attorney to provide legal services for county and county boards. Right to hire outside counsel.	76-42	174
Discretion of law enforcement officer to take intoxicated person to home or treatment center.	76-56	225
Necessity for presence of defendant during trial and sentence hearing for misdemeanor offense.	77-9	93
Review by Commissioners of confidential personnel files of police officers.	78-23	93
Clarification of employment of directors and staff of regional LEPC.	78-30	119
Impact of new Right to Keep and Bear Arms Amendment on state laws dealing with concealed weapons and confiscation.	79-4	31
Contracting county prosecutors or other lawyers for city misdemeanor cases.	79-21	132
Authority of city policeman in hot pursuit of suspect.	80-2	4

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Juvenile adjudicated on cause that would be felony or misdemeanor involving moral turpitude if committed by adult not entitled to expungement of record.	80-23	116
Idaho Courts have no authority to hold preliminary hearings on allegations of parole violations against person under the Uniform Act for Out-of-State Parole Supervision or Idaho State Correctional Institution.	80-29	154
Authority and function of grand jury.	81-2	50
In absence of arrest or citation, city attorney has duty to investigate applicable law and evidence of citizen's complaints. . .	81-7	78
Deadly force may be used to suppress a riot if reasonable and necessary.	81-9	93
"Officials of the State of Idaho" are exempt from misdemeanor provisions of concealed weapons statute.	81-10	102
Fines and forfeitures levied as condition of withheld judgment for violation of local ordinance must be distributed by county auditor in accord with 10/90 statutory formula. . .	83-1	69
Agreement of understanding allowing Department of Transportation to conduct administrative hearings to suspend or revoke drivers' licenses in name of Department of Law Enforcement is contrary to express statutory language and therefore ultra vires.	83-3	36
Department of Law Enforcement has discretion to reallocate funds among programs within the Agency.	83-3	36
Sheriff has responsibility and county must bear the expense of transporting inmates from prison to county where inmate's attendance in court is required.	83-11	94
Powers and duties of prosecutors and courts in handling petitions filed under Youth Rehabilitation Act.	83-12	101
Motor vehicle registration fees may not be used for costs of unrelated programs of Department of Law Enforcement such as Horse Racing Commission or Brand Board.	84-3	29
In Idaho, sheriff and prosecuting attorney in each county have primary duty to enforce state penal laws throughout the entire county. Services authorized by either official in carrying out criminal justice process are county expenses.	84-4	35

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
County sheriff may not refuse to accept city prisoners in county jail for failure of city to pay for its prisoners.	84-4	35
See Motor Vehicles, Transportation		
LEGISLATURE		
Subpoena power of Finance-Appropriations Committee. . .	75-1	1
Power of Legislative Committee.	75-4	11
Procedures required and allowable in verification of amendments.	75-10	28
Taxable income of Legislator. Deferred Compensation Plan.	75-40	125
Legality of "Head to Head" statute. Election of State Representatives.	75-68	244
Conflict of interest by state legislator.	76-66	282
Legislature empowered to limit options of Land Board in disposal of state "acquired lands".	77-13	191
Concurrent Resolutions do not supersede or replace laws. . .	77-64	304
Loaning of state credit.	78-4	15
Revocation or amendment of administrative rules or regulations previously approved by legislature.	78-12	44
Time within which bills presented to Governor prior to Legislature adjournment must be acted upon.	78-15	58
Clerical error causing erroneous presentment of bills.	78-18	67
Legislature must reconsider vetoed bills.	80-11	55
Senate may not adjourn without House concurrence.	80-12	57
Legislative confirmation of Pacific Northwest Electric Power and Conservation Planning Council member.	81-3	59
No constitutional bar to legislatively created office conducting duties similar to State Auditor.	82-1	46
Interpretation of statute prohibiting incurring any liability, moral, legal or otherwise, in excess of legal appropriation. .	82-11	117

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Single legislative act may contain numerous specific provisions if related to and naturally connected with single general subject.	84-10	87
LIBRARIES		
City libraries allowed to set aside one-half of income for building.	76-19	90
Formation of library district.	76-58	236
Application of public bidding laws to city libraries.	77-32	186
LIQUOR		
Liquor Fund share to Auditorium Board.	75-19	58
Distribution of surplus in state liquor funds.	75-44	152
Latest census report used to allocate liquor funds.	75-49	186
Sale of liquor with broken seals — Discounts to military installations — Computation of surcharges and rebates.	75-55	198
Entitlement to interest earned on idle funds held by State Treasurer's office for State Liquor Dispensary.	77-51	248
See Revenue and Taxation		
MILITARY		
Appointment of counsel and compensation in servicemen's absence.	76-62	267
MOTOR VEHICLES		
Use and placement of Motor Vehicle Caravan Permit fees.	77-15	122
Transportation on highways of special vehicles not meant for highway use.	77-35	195
Motor vehicle service contracts not insurance.	77-36	197
Allocation of types of motorcycle registration fees.	78-5	17
Collection of use fees on motor vehicles leased by construction companies.	78-9	30
Authority of Department of Motor Vehicles or local government to implement mandatory motor vehicle emissions. ...	78-42	178

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Written examinations for operator and chauffeur license applicants.	79-5	35
Constitutionality of requiring proof of automobile liability insurance.	79-19	116
Liens on motor vehicles and disposition of abandoned motor vehicles to be administered by Department of Transportation.	83-3	36
Driver's license, once granted, is valuable property right and may be suspended or revoked only pursuant to notice and opportunity to be heard.	84-5	48
Cities, counties and other political subdivisions of the State of Idaho are not subject to the automobile Insurance Liability Law.	85-8	46
See Revenue and Taxation, Transportation, Law Enforcement, Insurance		
OPEN MEETING LAW		
Hospital Board meetings and records.	75-7	22
Secret ballot in Idaho House of Representatives meeting in violation of Open Meeting Law.	77-13	115
Application of Open Meeting Law to particular groups and agencies.	77-30	180
Executive sessions to consider or evaluate personnel matters exempt. Final actions made in open session.	77-44	226
Exchange of information relating to foreseeable board action must be held in open meeting except when executive session permitted.	77-66	314
BRA Board of Commissioners' violation of Open Meeting Law and consequences of violation.	81-15	161
Commission of Pardons and Parole is subject to Open Meeting Law and required to open all meetings to public except those conducted in executive session.	85-9	50
PARKS AND RECREATION		
Right of way does not authorize use as park.	76-14	74

TOPIC	OPINION	PAGE
Concurrent resolutions indicative of legislative intent do not supersede or replace laws. Property can be transferred from one state agency to another without compensation.	77-64	304
PLANNING AND ZONING		
Lack of services justify denial of rezoning request.	75-5	14
County required to have zoning commission.	75-18	53
Public hearing on zoning changes — Qualifications of commission members.	75-43	150
Clarification of disclosure and disqualification due to conflict of interest on Planning and Zoning Board.	76-15	77
Legality of waiving ordinances for disaster housing.	76-25	109
Prohibitions on Planning and Zoning Commission membership.	76-27	116
Planning and zoning standards. Distinctions between use of police power and eminent domain.	77-10	96
Validity of ordinances requiring minimum lot size. Substandard lots may have to be combined to comply. Zoning and inverse condemnation.	77-14	119
County Commissioners must exercise planning and zoning powers or provide for planning and zoning commission. Local governments directed to prepare comprehensive plans and zoning ordinances.	77-22	147
Effect of local planning and zoning requirements on state projects.	77-37	204
Repeal of Local Planning Act.	78-7	23
Local Planning Act requires adoption of zoning ordinances.	81-18	175
Recording of survey statutes is supplementary to existing laws.	82-5	74
Duties of Planning and Zoning and of City Council regarding "material changes" in comprehensive plan.	82-6	77
County zoning ordinance regulating lake encroachment preempted by Lake Protection Act.	83-6	69

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
PRIVATE LANDS		
Right of way not authorized for use as park.	76-14	74
Tie-in of exclusive right to sell lots in sale of real property for subdivision is restraint of trade.	78-41	173
State's right to geothermal resources on private land and former state land.	79-11	64
PUBLIC EMPLOYEES		
Collective bargaining right of state employees.	75-11	30
Deferred Compensation.	75-40	125
"Moonlighting" by state employees. Executive and administrative officers defined.	75-41	144
Comprehensive liability coverage for volunteers assisting state.	75-57	207
Legality of incentive awards.	75-58	211
Compensation for holidays.	75-62	220
Legality of deferred compensation.	76-16	82
Legality of state regulation concerning height and weight of newly hired firemen.	76-29	126
Age requirements for firemen.	76-36	155
Garnishment of city employees' wages.	76-40	169
Ratio for granting compensatory time. Definition of executive, administrative and professional classes.	76-47	188
Legality of reallocation of pay grade classes by Personnel Commission.	76-48	194
Extra pay due to disaster emergency for county officials and employees.	76-55	221
Responsibilities defined in development of compensation plans for classified service.	76-64	273
Platoon commanders of municipal fire departments may be excluded from union membership.	77-8	90

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Compensation of overtime hours.	77-16	125
State has no liability to aid retirement fund beyond amount in fund.	77-57	278
Personnel Commission rules and regulations regarding promotions, compensation of public employees.	77-27	167
Funding of state compensation plan.	78-1	1
Participation of state employees in state-held public auctions.	78-8	25
Requirements relative to collective bargaining and compulsory arbitration.	78-14	55
Change of pay grade by IPC.	78-16	60
Exemption of city/county employees or volunteers from workmen's compensation.	78-22	86
Review by commissioners of confidential personnel files of police officers.	78-23	93
Legislation required to change Public Employee Retirement System Act.	78-27	111
Clarification of employment of directors and staff at regional LEPC.	78-30	119
Effects of cost-of-living adjustments in retirement benefits.	78-31	122
No conflict between statute adopting monthly basis for in-grade increases and longevity increments, and statute adopting hourly basis for payroll, vacation or annual leave, sick leave, etc.	78-39	163
Non-vesting of in-grade advancements.	79-25	155
Payments made to employees due to illness or disability are separate from wages.	80-28	149
Compensation for more than forty hours per week.	81-17	170
 PUBLIC FUNDS		
Disposition of Capitol Building Fund limited by Idaho Admission Bill.	75-48	175

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Limitations upon use of monies in search and rescue fund. . .	76-11	69
Legality of providing and funding temporary housing sites for disaster emergency.	76-25	109
Appropriation of public funds for celebrations, entertainment.	78-44	189
Grant or loan of public funds in aid of privately owned railroad by state or political subdivisions.	80-7	26
Provisions allowing investment of public funds in savings and loan associations do not apply to permanent endowment, state insurance and fireman's retirement fund.	80-18	92
Prudent Man Investment Rule controls all assets of state in fiduciary capacity.	82-7	82
Department of Water Resources not allowed to expend monies from Water Administration Fund not legislatively appropriated.	82-8	97
Constitutional and statutory restrictions on state funds affecting participation in federal delay of draw down procedures.	83-7	76
Statutes do not prohibit use of federal delay of draw down procedures for Employment Security Fund but practical problems make use of such procedures unavailable.	83-7	76
PUBLIC LANDS		
Governor voting member of Land Board.	75-53	196
When liens may attach upon real and personal property pursuant to the Idaho Forest Practices Act.	76-4	42
Discretion of State Land Board to lease lands for oil and gas extraction.	77-7	89
State can issue geothermal, oil or gas leases at Harriman State Park.	77-70	327
State Land Board may promulgate rules authorizing competitive bidding.	78-6	20
"Ten-percent fund" re state timber lands not for fire suppression.	78-28	114

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Reinstated land sale contracts reserve mineral rights.	78-38	158
Enforcement authority of State Board of Scaling Practices. Scaling methods permissive.	80-10	48
State Board of Land Commissioners' authority to determine size of manageable unit in regard to grazing leases.	81-8	89
Addendum to Attorney General Opinion 80-10 relating to scaling law.	82-A	39
Statute requiring Board of Land Commissioners to prescribe that timber sold from state lands be manufactured into lum- ber or timber products within Idaho is unconstitutional. . . .	84-9	85
 PUBLIC UTILITIES COMMISSION		
Effective date of law which suspends public utility rate in- creases prospective only.	75-30	97
Term of office of Public Utilities Commissioner whose nomi- nation is not reconfirmed.	79-3	26
 PUBLIC WORKS		
Legality of lease-purchase contracts by state.	75-51	86
Subcontractor must hold license to be eligible to bid.	75-60	217
Power of Department of Labor and Industrial Services to en- force building codes re schools and state buildings.	76-9	65
Application of Building Code Act to existing buildings. . . .	76-50	201
Building Code Act supersedes county building code.	76-59	243
Exclusion of health facilities from state construction and building requirements does not exclude private contractors from public works contractors licensing requirements.	77-11	109
"Personal services" defined relating to duties of purchasing agent when bidding process is required.	77-17	129
Application of public bidding laws to city libraries.	77-32	186
Engineering services are "personal services" exempt from bidding requirements.	77-42	221

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Both licensed engineers and architects may prepare electrical plans for buildings.	77-59	286
Bid process in awarding contract to Idaho Board of Corrections.	78-2	7
Use of design method in construction of public facilities. . .	78-19	71
Applicability of competitive bid requirements to a local government.	80-24	121
Compliance with Building Code Advisory Act by local governments.	81-5	73
Upgrading a license by sub-contractor in order to accept a contract from general contractor.	81-11	106
Electrical contractor must be licensed before submitting bid to perform electrical work.	83-9	87
REVENUE AND TAXATION		
Legality of local option taxation.	75-12	11
Sales tax fund — City share.	75-14	45
Depreciation schedule — Licensing of pleasure boats.	75-17	53
Taxation of leased sprinkler pipe.	75-29	91
Assessed valuation — Calculation of “circuit breaker” tax relief.	75-33	102
Exemption of religious body.	75-34	105
Tax Commission may obtain records from Bureau of Vital Statistics.	75-35	108
Weather modification district.	75-50	183
Double assessment for property tax evasion.	75-63	224
Sales and use tax exemptions.	75-64	229
Property purchased by city not subject to delinquent property taxes.	75-66	239
County must collect school district levy.	75-67	241

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Constitutionality of bill requiring Assessor to prepare assessed value base and adjusted gross income base for county commissioners to fix tax levy.	76-18	88
Requirement of both spouses' signatures on back of tax refund warrants.	76-20	92
Definition of real and personal property. Assessment of condominiums as personal or real property.	76-22	97
Two mill district court tax levy.	76-33	138
City of Grangeville entitled to revenue from sales tax fund from Idaho County.	76-37	159
Abatement of ad valorem taxes.	76-38	163
Exemption of pollution control devices from taxation.	76-44	178
Taxability of life insurance proceeds.	76-53	212
Procedure for receipt by counties. Statutes prohibit direct deposit-electronic funds transfer.	77-40	216
Tax Commission may not release names of persons or companies receiving Sales Tax Seller's Permits.	77-41	219
Tax Commission may release information to Department of Health and Welfare from income tax returns relating to support of dependents and location of such persons.	77-43	224
Actual and functional use of property is primary test for value of real property.	77-47	235
Discretion to levy tax upon lands, improvement or personal property in a uniform manner.	77-48	237
Duties of county Boards of Equalization.	77-50	246
Contributions to charities, proper use of tax funds.	77-56	269
Legislative prohibition against state ad valorem tax levies while sales tax is in effect.	77-63	303
Payment of health benefits through "self-funded" medical plan.	78-13	47

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Tax Commission not authorized to collect hotel/motel occupancy or liquor by the drink taxes.	78-26	108
One-percent property tax initiative.	78-37	148
County certification of tax levies and repayment of tax anticipation notes. Definition of cash bonds.	78-40	166
Effective date of Proposition (Initiative) One.	79-1	20
One-percent initiative and budget freeze law limitations on local improvement district assessment and new taxing districts.	79-7	41
Ballot proposition for budget limitation override.	79-12	70
Definition of "taxing district" and interpretation of restrictions imposed by budget freeze.	79-15	90
Constitutionality of 2% inflation cap of one-percent initiative.	79-16	97
Property value increase adjustments under one-percent initiative.	79-17	105
Pre-payment of taxes.	79-22	137
Constitutionality of delegating collection of Idaho income tax to IRS.	79-24	149
Valuation of depreciation on taxable personal property. ...	80-3	9
Appropriation of Sales Tax Fund to Capital Reserve Fund of Idaho Housing Agency.	80-4	13
Inclusion of sale or consumption of animals in determining what is agriculturally produced for income tax purposes. ...	80-8	37
Prior override not included in frozen operating budget funded by property taxes.	80-13	60
Determination of emergency fiscal powers available to local governments and governor's authority to use state resources to meet those emergencies.	80-16	80
Authority of local taxing districts to impose fees to fund services currently funded by ad valorem tax revenues.	80-21	106

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Assessor's duty to refine estimates of 1978 market value to maximize equity in property taxation.	81-6	76
Assessment of taxable real property at fair market value versus automatic 2% inflationary increase.	81-12	113
Constitutional prohibitions against a state coining money or establishing legal tender.	82-12	126
Effect of one-percent initiative on the use of city tax anticipation notes and registered warrants.	82-14	137
Effect of conflicting language in bills passed by legislature.	83-5	36
Absent statutory or case law governing priority of payment between current and delinquent property taxes. Tax Commission may promulgate regulations consistent with statute. ..	83-8	84
Sale of photocopies by county authorities is retail sale subject to tax under Idaho Sales Tax Act.	84-2	25
Effect of repeal in bill lacking "unity of subject and title". ..	84-10	87
Personal property tax liens superior to prior perfected purchase money security interests.	85-1	5
 SELF-REGULATING AGENCIES		
Accountants, State Board of Distinguishing between Certified Public Accountants and Licensed Public Accountants.	77-25	159
Bar Association, State Legality of interim billing.	75-36	111
Hearing Aid Dealers and Fitters, State Board of Certification of hearing aid dealers and fitters — Audiologists.	77-5	81
Dentistry, State Board of Subdivisions of state may not become members of corporations nor perform license examinations outside state.	77-20	141
Medicine, State Board of Malpractice insurance.	75-47	167

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Nursing, State Board of Nurse practitioners may be regulated and licensed.	77-60	289
Podiatry Examiners, State Board of Podiatrists are "health care providers" within meaning of Idaho Code.	77-19	138
Professional Engineers and Land Surveyors, State Board of Recording of survey statutes is supplementary to existing laws.	82-5	74
STATE BUILDINGS		
Legality of certain titles and leases. Sufficiency of Senate Concurrent Resolution to authorize construction.	76-35	147
Propriety of legislative approval of agreement prior to its ex- ecution. Footage and dollar limitations for capitol mall. ...	76-39	165
Legality of using permanent building funds for building pro- gramming and space planning studies.	77-6	85
Ownership of buildings erected by Building Authority does not transfer to state.	77-49	239
Appropriation of Permanent Building Fund to state agencies.	80-1	1
Power and procedure for State Building Authority to acquire and dispose of state buildings.	83-2	30
TRANSPORTATION		
Road easements on state lands may not be acquired by ad- verse possession.	75-32	100
Powers of Highway Department commissioners.	75-69	244
Legality of agency to provide services for non-profit organiza- tions.	76-41	171
Legality of including value engineering specification in stan- dard specification for highway construction.	77-31	184
Advertisement of motorist services on highway signs autho- rized by law.	77-34	193
Governmental subdivision duty to maintain highways. En- croachment on highways. Public easements on rights of ways.	77-38	207

TEN-YEAR OPINIONS INDEX 1975-1985

TOPIC	OPINION	PAGE
Grant or loan of public funds in aid of privately owned railroads.	80-7	26
After July 1, 1983, only Department of Transportation has authority to suspend or revoke drivers' licenses.	83-3	36
Agreement of understanding allowing Department of Transportation to conduct administrative hearings to suspend or revoke drivers' licenses in name of Department of Law Enforcement contrary to express statutory language and therefore ultra vires.	83-3	36
Department of Transportation has discretion to reallocate funds among programs within Agency.	83-3	36
Statute providing for suspension of a driving license as punishment for drinking or possession of alcohol by minor in times and places unrelated to operation of motor vehicle unconstitutional.	84-5	48
See Motor Vehicles		
WATER RESOURCES		
Bureau of Reclamation water rights for Ririe Dam subject to rights of prior appropriators.	75-20	59
Interstate water use.	75-22	64
Hayden Lake Irrigation District subject to State Board of Health.	75-31	98
Liability for Barber Dam.	75-45	154
Validity, enactment and effect of State Water Plan.	77-26	162
State Water Plan and its relation to Idaho laws and Constitution.	77-65	307
State's right to geothermal resources on private land and former state land.	79-11	64
Department of Water Resources not allowed to expend moneys from Water Administration Fund not legislatively appropriated.	82-8	97
Water Resource Board has the authority to issue revenue bonds for hydroelectric power project.	85-2	9

**OFFICIAL OPINIONS
1975 – 1985
UNITED STATES CONSTITUTION CITATIONS**

ARTICLE & SECTION	OPINION	PAGE
ARTICLE II		
§ 6	77-1	..... 57
ARTICLE IV		
§ 2	76-36	..... 155
ARTICLE V	75-10	..... 28
ARTICLE XVIII		
§ 7	75-72	..... 257
Fourth Amendment	75-15	..... 49
Fourth Amendment	76-6	..... 49
Fifth Amendment	77-9	..... 93
Twenty-Sixth Amendment	75-26	..... 79

**OFFICIAL OPINIONS
1975 – 1985
IDAHO CONSTITUTION CITATIONS**

ARTICLE & SECTION	OPINION	PAGE
ARTICLE I		
§ 1	77-10	96
§ 2	76-12	71
§ 2	79-4	31
§ 3	76-12	71
§ 6	80-29	165
§ 7	77-9	93
§ 8	81-2	50
§ 10	78-31	122
§ 13	77-9	93
§ 13	79-4	31
§ 13	83-2	30
§ 14	77-10	30
§ 17	75-15	49
§ 19	75-68	244
ARTICLE II		
§ 1	76-35	147
§ 1	79-2	21
§ 1	80-15	77
§ 1	80-19	98
§ 1	80-19	99
§ 1	80-19	100
§ 1	80-20	103
§ 1	80-20	104
§ 1	80-29	162
§ 1	82-8	97
§ 1	82-9	107
§ 1	83-1	25
§ 1	85-5	31
ARTICLE III		
§ 1	76-35	147
§ 1	75-1	1
§ 1	75-10	28
§ 1	76-12	71
§ 1	77-60	289
§ 1	78-37	148
§ 1	79-24	149
§ 1	83-2	30
§ 9	75-4	11
§ 9	76-66	282
§ 9	77-13	115
§ 9	78-37	148
§ 9	80-12	57

TEN-YEAR OPINIONS 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	OPINION	PAGE
§ 9	80-12	58
§ 12	77-13	115
§ 15	77-65	307
§ 15	75-40	125
§ 16	81-13	125
§ 16	84-10	87
§ 18	81-13	125
§ 19	82-11	117
§ 19	83-2	30
§ 20	80-27	144
§ 22	76-28	118
§ 22	76-31	132
 ARTICLE IV		
§ 1	75-37	113
§ 1	75-41	144
§ 1	79-24	149
§ 1	82-1	46
§ 1	82-2	49
§ 1	83-4	56
§ 2	75-37	113
§ 5	78-32	126
§ 6	76-24	105
§ 6	77-1	51
§ 6	78-21	81
§ 6	81-13	125
§ 7	82-9	107
§ 7	83-13	116
§ 7	84-8	75
§ 7	85-9	50
§ 10	76-28	118
§ 10	78-15	58
§ 10	78-18	67
§ 10	80-11	55
§ 10	80-11	56
§ 12	77-1	51
§ 13	77-1	51
§ 13	78-25	101
§ 18	75-38	117
§ 18	82-11	117
§ 18	83-4	56
§ 20	79-25	155
§ 20	80-1	3
 ARTICLE V		
§ 2	77-30	180
§ 2	79-24	149
§ 2	83-1	25
§ 6	76-24	105

TEN-YEAR OPINIONS 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	OPINION	PAGE
§ 7	85-5	..... 31
§ 11	78-21	..... 81
§ 12	76-24	..... 105
§ 13	79-2	..... 21
§ 13	79-24	..... 149
§ 18	76-24	..... 105
§ 18	79-21	..... 132
§ 18	79-24	..... 149
§ 18	81-7	..... 78
§ 20	79-24	..... 149
§ 23	76-24	..... 105
ARTICLE VI		
§ 2	75-26	..... 79
§ 4	75-68	..... 244
§ 6	76-24	..... 105
§ 6	76-10	..... 67
ARTICLE VII		
.....	76-35	..... 147
§ 2	75-1	..... 1
§ 2	76-59	..... 243
§ 2	78-37	..... 148
§ 2	79-14	..... 81
§ 2	79-16	..... 97
§ 2	81-12	..... 113
§ 2	85-1	..... 5
§ 4	75-66	..... 239
§ 4	79-14	..... 81
§ 5	76-18	..... 88
§ 5	78-37	..... 148
§ 5	79-14	..... 81
§ 5	79-16	..... 97
§ 5	81-12	..... 113
§ 6	75-12	..... 32
§ 6	76-10	..... 67
§ 6	76-3	..... 7
§ 6	79-14	..... 81
§ 6	80-21	..... 109
§ 6	81-6	..... 76
§ 7	85-1	..... 5
§ 9	75-51	..... 186
§ 10	76-66	..... 282
§ 11	75-51	..... 186
§ 11	83-7	..... 76
§ 12	77-50	..... 246
§ 12	78-26	..... 108
§ 12	81-12	..... 113
§ 13	75-1	..... 1

TEN-YEAR OPINIONS 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	OPINION	PAGE
§ 13	75-13	38
§ 13	75-38	117
§ 13	76-34	142
§ 13	80-19	96
§ 13	80-19	97
§ 13	80-19	99
§ 13	80-19	100
§ 13	80-20	102
§ 13	80-20	103
§ 13	81-13	125
§ 13	82-1	46
§ 13	82-8	97
§ 13	82-11	117
§ 13	83-7	76
§ 15	78-40	166
§ 15	79-15	90
§ 15	79-17	105
§ 15	80-16	80
§ 15	80-16	82
§ 15	80-16	83
§ 15	82-14	137
§ 17	77-15	124
§ 17	78-5	17
§ 17	84-3	29
ARTICLE VIII	76-35	147
§ 1	75-51	186
§ 1	76-16	82
§ 1	77-49	239
§ 1	80-4	13
§ 1	80-4	14
§ 1	80-4	15
§ 1	80-4	16
§ 1	82-11	117
§ 1	83-2	30
§ 1	83-7	76
§ 2	75-45	157
§ 2	76-41	171
§ 2	77-20	141
§ 2	77-49	239
§ 2	78-1	1
§ 2	78-4	15
§ 2	79-10	56
§ 2	80-4	13
§ 2	80-4	14
§ 2	80-4	15
§ 2	80-4	16
§ 2	80-4	17

TEN-YEAR OPINIONS 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	OPINION	PAGE
§ 2	80-7	26
§ 2	80-7	27
§ 2	80-7	31
§ 2	80-7	32
§ 2	80-7	34
§ 2	80-7	35
§ 2	82-11	117
§ 2	83-7	76
§ 2	85-4	20
§ 3	75-51	186
§ 3	76-7	53
§ 3	77-12	110
§ 3	77-39	210
§ 3	78-2	7
§ 3	78-20	74
§ 3	79-12	70
§ 3	79-13	77
§ 3	79-16	97
§ 3	79-20	122
§ 3	79-22	137
§ 3	80-7	31
§ 3	80-16	80
§ 3	80-16	83
§ 3	82-11	117
§ 3	82-14	137
§ 3B	80-7	34
§ 4	77-4	76
§ 4	77-12	110
§ 4	77-20	141
§ 4	77-56	269
§ 4	79-10	56
§ 4	80-7	26
§ 4	80-7	27
§ 4	80-7	32
§ 4	80-7	34
§ 4	80-7	35
§ 6	77-56	269
§ 7	77-56	269
§ 10	76-65	276
ARTICLE IX		
§ 1	76-54	215
§ 3	76-1	1
§ 3	79-8	46
§ 3	81-14	154
§ 3	84-3	29
§ 3	85-4	20
§ 4	76-1	1

TEN-YEAR OPINIONS 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	OPINION	PAGE
§ 4	81-14	154
§ 5	78-20	74
§ 7	75-53	196
§ 7	76-1	1
§ 7	77-33	191
§ 7	78-38	158
§ 7	82-3	52
§ 7	83-2	30
§ 7	85-3	14
§ 8	75-32	100
§ 8	76-1	1
§ 8	76-14	74
§ 8	77-33	191
§ 8	78-6	20
§ 8	81-8	89
§ 8	82-3	52
§ 8	82-10	110
§ 8	83-2	30
§ 8	85-3	14
§ 9	75-8	24
§ 9	75-32	100
§ 9	83-12	101
§ 10	80-1	3
§ 10	82-3	52
§ 11	77-17	129
§ 11	82-7	82
§ 11	85-4	20
§ 11 (1968 amendment)	79-8	46
 ARTICLE X		
§ 5	82-9	107
 ARTICLE XI		
§ 2	76-35	147
§ 2	83-2	30
§ 4	78-33	130
 ARTICLE XII		
§ 1	77-37	204
§ 1	76-3	7
§ 1	81-7	78
§ 1	84-4	35
§ 2	75-69	249
§ 2	76-3	7
§ 2	77-14	119
§ 2	79-6	38
§ 2	79-10	56
§ 2	79-14	81
§ 2	80-16	84
§ 2	80-21	109

TEN-YEAR OPINIONS 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	OPINION	PAGE
§ 2	80-22	..... 113
§ 2	83-6	..... 69
§ 4	77-12	..... 110
§ 4	77-56	..... 269
§ 4	79-10	..... 56
§ 4	80-7	..... 28
§ 4	80-7	..... 31
§ 4	80-7	..... 32
§ 4	80-7	..... 32
§ 4	80-7	..... 34
§ 4	80-7	..... 35
§ 6	84-4	..... 35
 ARTICLE XIV	 79-11	 64
 ARTICLE XV		
§ 7	77-26	..... 162
§ 7	82-3	..... 52
§ 7	85-2	..... 9
 ARTICLE XVI		
§ 3	77-65	..... 307
§ 7	77-65	..... 307
 ARTICLE XVIII	 77-37	 204
§§ 1 through 6	84-4	..... 35
§ 6	76-8	..... 57
§ 6	76-42	..... 174
§ 6	76-55	..... 221
§ 6	79-2	..... 21
§ 7	76-55	..... 221
§ 7	79-21	..... 132
§ 11	77-56	..... 269
§ 11	79-10	..... 56

**OFFICIAL OPINIONS
1975 – 1985
IDAHO CODE CITATIONS**

CODE	OPINION	PAGE
1-211	78-45	193
1-211	81-2	50
1-211	83-1	23
1-213	81-2	50
1-214	81-2	50
1-215	81-2	50
1-702	78-21	81
1-711	78-45	193
1-907	79-2	21
1-1102	78-45	193
1-1613	79-2	21
Title 1, Chapter 20	82-7	82
1-2008(1) through (8)	82-7	82
1-2101	82-7	82
1-2102	78-21	81
1-2102(3)	76-24	105
Title 1, Chapter 22	84-6	54
1-2203	78-24	96
1-2205	78-24	96
1-2217	79-2	21
1-2220	78-24	96
Title 1, Chapter 23	84-6	54
1-2301	84-6	54
1-2301A	84-6	54
1-2303	76-17	85
1-2304	76-17	85
1-2308	84-6	54
3-104	76-21	94
3-409	82-8	97
5-514	85-10	56
5-1112	81-1	41
5-1116	81-1	41
Title 6	84-6	54
6-901	79-18	112
6-902(4)	78-17	63
6-903	78-17	63
6-903	81-13	125
6-903	85-8	46
6-904	81-13	125
6-904(4)	78-17	63
6-912	85-8	46
6-919	85-8	46
6-923	85-8	46

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
6-926	85-8	46
6-927	79-12	70
6-927	85-8	46
6-928	79-12	70
6-1001	77-19	138
6-1002	77-19	138
6-1007	77-19	138
6-1012	77-19	138
6-1013	77-19	138
7-301	81-13	125
7-1048 et seq.	85-10	56
8-501	76-40	169
6-505	85-10	56
6-506	85-10	56
8-528	85-10	56
8-529	85-10	56
9-101(2)(3)	80-29	163
9-203	77-52	250
9-203(5)	78-23	93
9-301	77-52	250
9-301	78-23	93
9-301	80-23	116
9-301	81-1	41
9-301	85-9	50
9-311	77-52	250
9-311	78-23	93
9-311	81-1	41
11-201	76-40	169
14-402(1)(2)(3)	76-53	212
Title 14, Chapter 5	85-6	38
14-501 et seq.	85-6	38
14-502	85-6	38
14-511	85-6	38
14-513	85-6	38
14-516	83-10	91
14-517	85-6	38
14-519	85-6	38
14-538	85-6	38
16-801	80-23	116
16-1601 et seq.	83-12	101
16-1801 et seq.	83-12	101
16-1802	77-56	269
16-1812	77-56	269
16-1816A	80-23	116
16-1816A	80-23	117
16-1816A	80-23	118
16-1816A	80-23	119
16-1820	77-56	269

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
18-106	84-6	54
18-106	76-56	225
18-303	80-2	5
18-315	81-18	175
18-316	82-4	66
18-410 et seq.	85-10	56
18-608	80-14	70
18-608	80-30	175
18-701	84-4	35
18-1502(c)	84-5	48
18-2505	81-9	93
18-3106	84-6	54
18-3302	79-4	31
18-3302	81-10	102
18-4004	76-65	232
18-4006	75-65	232
18-4009(4)	81-9	93
18-4011	81-9	93
18-4528	84-4	35
18-4626(a)	80-10	50
18-4901	75-52	190
18-4901	80-27	145
18-4901	80-27	146
18-4901	80-27	147
18-5702	78-43	183
18-6401	81-9	93
18-6402	81-9	93
18-6407	81-9	93
18-7029	77-33	191
19-224	81-9	93
19-225	81-9	93
19-510	80-2	6
19-604	80-2	5
19-604	80-2	7
19-610	76-56	225
19-618	80-2	5
19-618	80-2	6
19-618	80-2	7
19-813	85-9	50
19-851	79-2	21
19-862	76-49	198
19-1101	81-2	50
19-1104	81-2	50
19-1105	81-2	50
19-1106	81-2	50
19-1107	81-2	50
19-1109	81-2	50
19-1111	81-2	50

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
19-1112	81-2	50
19-1112	85-9	50
19-1123	85-9	50
19-1123	81-2	50
19-1807	79-4	31
19-1903	77-9	93
19-2513	79-9	52
19-2513	84-8	75
19-2513A	79-9	52
19-2513A	82-9	107
19-2513A	84-8	75
19-2514	77-9	93
19-2515(d)	85-9	50
19-2601	80-26	139
19-2601	80-29	161
19-2601(2)	78-17	63
19-2602	80-29	161
19-2602	80-29	162
19-2602	80-29	165
19-2604(2)	80-26	139
19-2604(2)	80-26	140
19-2905	80-29	165
19-2906	80-29	165
19-3012	83-11	94
19-3801 through 3805	79-4	31
19-3807	79-4	31
19-4201	80-29	162
19-4522	84-4	35
19-4523	84-4	35
19-4601	83-11	94
19-4705	83-1	25
19-4705	84-4	35
19-5100	77-58	280
19-5101	77-58	280
19-5109	78-30	119
19-5116	84-3	29
20-209	79-18	112
20-209(B)	81-2	50
20-210	83-13	116
20-210	85-9	50
20-213	83-13	116
20-213	84-8	75
20-213	85-9	50
20-214	79-18	112
20-219	80-29	161
20-223	82-9	107
20-223	83-13	116
20-223	84-8	75

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
20-227	80-29	..... 161
20-229	80-29	..... 162
20-229	80-29	..... 168
20-229	80-29	..... 169
20-229(A)	80-29	..... 166
20-229(A)	80-29	..... 169
20-233	85-9	..... 50
20-237	83-11	..... 94
20-238	83-11	..... 94
20-241	80-15	..... 76
20-241	80-15	..... 77
20-241	80-15	..... 78
20-241.4	80-15	..... 76
20-242	80-15	..... 74
20-242	80-15	..... 75
20-242	80-15	..... 76
20-242	80-15	..... 77
20-242	80-15	..... 78
20-242.3	80-15	..... 74
20-242.3	80-15	..... 75
20-245	78-2	..... 7
20-301	80-29	..... 156
20-301(3)	80-29	..... 159
20-301(3)	80-29	..... 163
20-301(3)	80-29	..... 170
20-302	80-29	..... 156
20-402	78-2	..... 7
20-412	78-2	..... 7
20-415	82-2	..... 49
29-415	83-4	..... 56
20-503	83-11	..... 94
20-505	83-11	..... 94
20-601	84-4	..... 35
20-604	83-11	..... 94
20-605	84-4	..... 35
20-612	83-11	..... 94
20-612	84-4	..... 35
21-104	80-7	..... 32
21-142	82-3	..... 52
22-103(19)	82-3	..... 52
22-142	82-3	..... 52
22-1316	84-6	..... 54
22-4301	75-50	..... 183
22-4302	75-50	..... 183
23-102	84-5	..... 48
23-207	75-64	..... 229
23-217	75-64	..... 229
23-401	77-51	..... 248

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
23-401	77-61	..... 297
23-403	75-44	..... 152
23-404	75-44	..... 152
23-404	75-49	..... 180
23-405	75-49	..... 180
23-408	75-49	..... 180
23-604	76-19	..... 90
23-612	84-5	..... 48
23-806	75-55	..... 198
23-941	84-5	..... 48
24-949	84-5	..... 48
25-2621	79-15	..... 90
26-919	85-6	..... 38
Title 26, Chapter 10	85-6	..... 38
26-1001 et seq.	85-6	..... 38
26-1002	75-21	..... 61
26-1016	85-6	..... 38
26-1017 et seq.	85-6	..... 38
26-1023	85-6	..... 38
26-1919	80-18	..... 92
26-1919	80-18	..... 93
26-1919	80-18	..... 94
26-1919	80-18	..... 95
26-1919	82-4	..... 66
26-2104(i)	78-1	..... 1
26-2129	76-41	..... 171
27-118	82-3	..... 52
28-2-106	75-73	..... 152
28-2-106(1)	76-30	..... 130
28-2-204	75-73	..... 152
28-2-312	78-10	..... 34
28-2-313	77-36	..... 197
28-2-313	78-10	..... 34
28-2-314	78-10	..... 34
28-2-315	78-10	..... 34
28-2-319	75-44	..... 152
28-2-401	75-44	..... 152
28-2-401	75-73	..... 259
28-3-403	76-20	..... 92
28-3-417	84-6	..... 54
28-3-507(2)	84-6	..... 54
28-3-510A	84-6	..... 54
28-3-510B	84-6	..... 54
28-3-510C	84-6	..... 54
28-4-207	84-6	..... 54
28-9-102(2)	85-1	..... 5
28-9-310	85-1	..... 5
28-9-403(5)	77-46	..... 233

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
28-9-405(1)	77-46	233
28-22-104(2)	84-6	54
28-31-106	76-2	5
28-33-104	76-2	5
28-34-102	77-54	256
28-34-103	77-54	256
29-114	79-13	77
Title 30, Chapter 1	78-29	117
30-101	77-53	253
30-103(1)(e)	78-33	130
30-117(1)	78-33	130
30-602	77-52	250
30-603	77-53	253
30-1002	75-13	38
Title 30, Chapter 13	78-29	117
30-1301	77-23	151
30-1303(2)	77-23	151
30-1304	77-23	151
30-1307	77-23	151
30-1311	77-62	299
30-1401	75-45	157
31-601	79-10	56
31-602	80-24	128
31-604	76-25	109
31-604	79-10	56
31-604	80-24	128
31-605	79-10	56
31-714	75-69	249
31-714	76-59	243
31-714	79-10	56
31-714	84-4	35
31-801	76-8	57
31-801	79-10	56
31-802	84-4	35
31-807	79-10	56
31-828	77-56	269
31-828	79-10	56
31-829	79-10	56
31-836	75-57	207
31-836	79-10	56
31-840	75-57	207
31-855	76-13	73
31-855	77-56	269
31-855	79-10	56
31-866	77-56	269
31-867	76-33	138
31-867	76-49	198
31-867	78-36	145

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
31-867	79-2	21
31-870	80-21	108
31-1001	80-24	125
31-1208	79-17	105
31-1317	82-3	52
31-1401 through 1437	78-14	55
31-1420	77-48	237
31-1502	76-33	138
31-1502	79-2	21
31-1506	78-40	166
31-1509	79-2	21
31-1514	78-40	166
31-1514	80-16	82
Title 31, Chapter 16	78-36	145
31-1601	78-37	148
31-1601	78-40	166
31-1601	79-2	21
31-1602	75-2	2
31-1602	75-7	22
31-1603	75-2	2
31-1603	75-7	22
31-1605	76-55	221
31-1605	78-37	148
31-1605	78-40	166
31-1605	79-15	90
31-1605	80-16	85
31-1605A	78-40	166
31-1606	75-2	2
31-1606	76-31	132
31-1607	76-33	138
31-1608	76-33	138
31-1608	76-55	221
31-1608	79-17	105
31-1608	80-16	81
31-1608	80-16	84
31-2001	76-42	174
31-2001	76-55	221
31-2002	76-42	174
31-2002	76-55	221
31-2002	76-17	85
31-2003	76-8	57
31-2003	76-17	85
31-2003	77-56	269
31-2103	77-40	216
31-2104	77-40	216
31-2124	80-16	84
31-2124	80-16	85
31-2125	80-16	84

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
31-2202	81-9	93
31-2202	83-11	94
31-2202	84-4	35
31-2227	81-7	78
31-2227	84-4	35
31-2227	84-6	54
31-2303	77-40	216
31-2304	77-40	216
31-2604	76-42	174
31-2604	79-21	132
31-2604	81-7	78
31-2604(2)	81-7	78
31-3107	77-56	269
31-3113	79-21	132
31-3201	75-2	2
31-3201	76-28	118
31-3201	80-21	108
31-3201	84-2	25
31-3201A	78-36	145
31-3201B	84-3	29
31-3203	80-21	108
31-3203	83-11	94
31-3205	75-2	2
31-3205	80-21	108
31-3206	75-2	2
31-3212	75-2	2
31-3302	83-11	94
31-3302	84-4	35
31-3404	76-52	209
31-3501	78-20	74
31-3503	78-20	74
31-3513	76-7	53
31-3610	75-7	22
31-3615	78-20	74
31-3801	75-5	14
31-3801	75-18	53
31-3804	75-5	14
31-3804	75-18	53
31-3908	79-15	90
31-4001	80-24	125
31-4001	80-24	128
31-4002	77-42	221
31-4002	80-24	125
31-4003	77-42	221
31-4403	79-20	122
31-4404	79-20	122
31-4404	80-21	108
32-709	85-10	56

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
Title 32, Chapter 9	85-10	56
32-901	85-10	56
32-912	76-20	92
32-1002	84-7	67
32-1002	85-10	56
32-1003	85-10	56
32-1008A	84-7	67
32-1008A	85-10	56
32-1008A(1)(4)(5)	85-10	56
32-1011	77-63	303
33-101	75-59	214
33-107	82-3	52
33-201	76-54	215
33-202	76-54	215
33-202	83-12	101
33-205	76-54	215
33-205	83-12	101
33-206	83-12	101
33-207	83-12	101
33-301	79-22	137
33-404	75-26	79
33-513(5)	82-13	129
33-601	82-3	52
33-601(1)(2)	79-22	137
33-701	78-37	148
33-802	75-67	241
33-802	80-13	65
33-804	75-70	253
33-805	75-39	123
33-901	79-22	137
33-903	75-59	214
33-909	84-10	87
33-1009(4)	82-13	129
33-1103	79-22	137
33-1212	77-44	226
33-1212 et seq.	82-13	129
33-1276	82-13	129
33-1401	80-25	134
33-1401	80-25	135
33-1401(10)	80-25	1
33-1402	76-54	215
33-1403	76-54	215
33-1406	76-54	215
33-1406	80-25	137
33-1407	76-54	215
33-2001	80-25	132
33-2001	80-25	134
33-2001	80-25	135

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
33-2004	80-25	136
33-2107	82-3	52
33-2114	75-59	214
33-2122	82-3	52
33-2140	75-59	214
33-2141	75-59	214
33-2602	77-32	186
33-2603	77-32	186
33-2604	76-19	90
33-2604	77-32	186
33-2701	76-58	236
33-2704A	76-58	236
33-2705	76-58	236
33-2722	76-58	236
33-2801	80-1	3
33-2804	82-3	52
33-3001	80-1	3
33-3005	82-3	52
33-3101	80-1	3
33-3104	82-3	52
33-3404	82-3	52
33-3504	82-3	52
33-3720	84-1	21
33-3721	84-1	21
33-3804	82-3	52
33-4001	80-1	3
33-4005	82-3	52
34-401	76-61	263
34-408	77-55	266
34-435	75-42	48
34-501	75-28	84
34-614	75-68	244
34-615(3)	76-24	105
34-616	75-68	244
34-616	78-21	81
34-701	75-28	84
34-704	78-21	81
34-704	76-45	180
34-714	76-45	180
34-715	76-45	180
34-905	78-21	81
34-1217	75-68	244
34-1712	76-10	67
34-1712	77-2	145
34-1805	79-23	146
34-2001(A)	76-7	53
34-2501	75-28	84
36-104	80-27	143

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
36-104	80-27	..... 144
36-104	80-27	..... 147
36-104	80-27	..... 148
36-104	81-16	..... 166
36-104	82-3	..... 52
36-104(b)(5)	80-27	..... 142
36-104(b)(5)	80-27	..... 143
36-104(b)(5)	80-27	..... 145
36-104(b)(5)	80-27	..... 147
36-104(b)(8)	81-16	..... 166
36-104(b)(9)	81-16	..... 166
36-104(c)	81-16	..... 166
36-107	82-3	..... 52
36-406	80-27	..... 144
36-407	80-27	..... 144
36-409	80-27	..... 144
36-1301	77-58	..... 280
36-1801	82-3	..... 52
36-1802	82-3	..... 52
36-1803	82-3	..... 52
36-2101	78-34	..... 135
36-2102	78-34	..... 135
36-3906	80-19	..... 97
37-302	81-4	..... 67
37-501	76-63	..... 270
37-1915	75-73	..... 259
37-2102	77-45	..... 229
Title 38, Chapter 1	78-11	..... 39
38-131	77-67	..... 318
Title 38, Chapter 12	82-A	..... 39
38-1202(c)	80-10	..... 48
38-1202(c)	80-10	..... 49
38-1202(c)	80-10	..... 52
38-1202(c)	82-A	..... 39
38-1208	80-10	..... 53
38-1211	80-10	..... 53
38-1213	80-10	..... 53
38-1214	80-10	..... 53
38-1215	80-10	..... 53
38-1218	80-10	..... 53
38-1219	80-10	..... 53
38-1220	80-10	..... 48
38-1220	80-10	..... 49
38-1220	80-10	..... 51
38-1220	80-10	..... 52
38-1220	82-A	..... 39
38-1220(A)	80-10	..... 48
38-1220(A)	80-10	..... 53

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
38-1221	80-10	48
38-1221	80-10	53
38-1221	80-10	54
38-1303	76-4	42
38-1308	76-4	42
39-101 through 119	77-45	229
39-101 through 119	78-42	178
39-102	81-13	125
39-103	75-31	98
39-105(3)	81-13	125
39-106(b)	80-6	23
39-106(b)	80-6	24
39-107(8)	81-13	125
39-108	81-13	125
39-116	81-13	125
39-117	81-13	125
39-119	81-4	67
39-145	77-52	250
39-264	75-35	108
39-401	75-38	117
39-401	80-1	3
39-401	81-4	67
39-414	81-4	67
39-414(2)	81-4	67
39-414(4)	81-4	67
39-414(11)	81-4	67
39-416	81-4	67
39-1401 through 1416	77-11	109
39-1441	77-11	109
39-2701	77-2	68
39-2701	80-22	114
39-2715	77-2	68
39-2715	78-2	7
39-2716	77-2	68
39-3601	75-35	108
39-3602	75-35	108
39-3603	75-35	108
39-3604	75-35	108
39-3605	75-35	108
39-3606	75-35	108
39-3606	80-19	96
39-3606	80-19	97
39-3607	75-35	108
39-3607	80-19	96
39-4005	77-3	74
39-4007	76-43	176
39-4007	77-3	74
39-4009	77-2	68

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
39-4101	76-9	65
39-4101	76-50	201
39-4103(4)	76-59	243
39-4104	76-9	65
39-4104	76-59	243
39-4109	76-9	65
39-4109(1)	76-59	243
39-4109(10)	81-5	73
39-4111	77-37	204
39-4113	76-9	65
39-4116	76-9	65
39-4116	76-59	243
39-4116	81-5	73
39-4124	85-7	43
39-4202	78-20	74
39-4205	78-20	74
39-4209	78-20	74
39-6001 et seq.	85-5	31
39-6002(a)(d)	85-5	31
39-6003	85-5	31
39-6008	85-5	31
39-7007	76-43	176
40-106	77-38	207
40-107	75-69	249
40-111	80-7	32
40-120	76-41	171
40-120	82-3	52
40-308	77-34	193
40-501	77-38	207
40-709	77-38	207
40-901-906	77-38	207
40-1001	80-24	125
40-1001	80-24	128
40-1002	80-24	125
40-1601	80-5	20
40-1601	80-24	128
40-1608	79-6	38
40-1610	82-3	52
40-1611	75-69	249
40-1611	79-6	38
40-1613	75-69	249
40-1615	79-6	38
40-1620	80-16	85
40-1636	79-6	38
40-1637	80-16	85
40-1638	80-16	85
40-1665	75-69	249
40-2202	78-2	7

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
40-2203	78-2	7
40-2205	77-31	184
40-2703	80-5	19
40-2705	80-5	20
40-2706	80-5	19
40-2706	80-5	20
40-2708	80-5	19
40-2708	80-5	20
40-2709	75-14	45
40-2709	76-37	159
40-2710	80-5	19
40-2710	80-5	20
40-2718	80-5	19
40-2729	80-5	19
40-2729	80-5	20
40-2828(5)	77-34	193
40-3001	80-5	19
41-102	76-5	46
41-102	77-36	197
41-102	78-9	30
41-103	76-5	46
41-103	77-36	197
41-103	78-9	30
41-110	76-5	46
41-200	77-54	256
41-220	77-55	266
41-305	76-5	46
41-305	77-36	197
41-305	78-9	30
41-312	77-54	256
41-337	75-71	254
41-501	75-27	81
41-503	77-54	256
41-506	75-27	81
41-506(i)(j)	78-10	34
41-506(l)(b)	77-36	197
41-506(l)(q)	77-36	197
Title 41, Chapter 7	82-7	82
41-702	82-7	82
41-703	82-7	82
41-706(1)(2)(3)	82-7	82
41-707	82-7	82
41-708	82-7	82
41-709	82-7	82
41-710	82-7	82
41-711	82-7	82
41-713	82-7	82
41-714	82-7	82

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
41-716	82-7	82
41-717	82-7	82
41-719	82-7	82
41-720	82-7	82
41-721	82-7	82
41-722	82-7	82
41-735	82-7	82
41-735(1)	82-7	82
41-1021	75-71	254
41-1024	75-71	254
41-1034	76-26	113
41-1035	76-26	113
41-1036	76-26	113
41-2005	76-2	5
41-2301	77-54	256
41-2302	77-54	256
41-2304(2)	77-54	256
41-2829(2)	78-1	1
41-2849	78-1	1
Title 41, Chapter 37	78-20	74
41-3707(4)	78-20	74
41-3712	78-20	74
41-3712(e)	78-20	74
41-4003(1)(2)	78-13	47
41-4012(1)	78-13	47
41-4302	78-35	140
41-4304	78-35	140
41-4305(11)	78-35	140
41-4308	78-35	140
42	79-11	64
Title 42, Chapter 2	79-11	64
42-213	79-11	64
42-221	82-8	97
42-226	79-11	64
42-237(a)	82-8	97
42-238(2)	82-8	97
42-238(a)	82-8	97
42-405	75-22	64
42-1414	82-8	97
42-1711	75-45	157
42-1713	82-8	97
42-1718	75-45	157
42-1731	85-2	9
42-1732	77-26	162
42-1732	85-2	9
42-1734	77-65	307
42-1734	82-3	52
42-1734(x)(s)	85-2	9

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
42-1736	77-26	162
42-1736	77-65	307
42-1738	77-65	307
42-1751(d)	85-2	9
42-1752	82-8	97
42-1753	82-8	97
42-3115	82-3	52
42-3200	77-12	110
42-3202	80-22	113
42-3212(e)	80-16	85
42-3212(m)	80-22	114
42-3708	82-3	52
42-3801	81-10	102
42-3812	81-10	102
42-3901	75-47	167
42-3905	82-8	97
Title 42, Chapter 40	79-11	64
42-4001	79-11	64
42-4001	82-8	97
42-4002(c)	79-11	64
42-4003	82-8	97
42-4005	79-11	64
42-4005(e)	79-11	64
42-4006(e)	79-11	64
43-414	80-16	81
43-414	80-16	86
43-614	80-16	86
44-107	75-11	30
44-107	80-6	22
44-107	80-6	23
44-107A	80-6	22
44-107B	80-6	22
44-1105	78-2	7
44-1202	77-16	125
44-1203	77-16	125
44-1801	80-6	23
44-1801	80-6	24
44-1801(a)	77-8	90
44-1801 through 1811	78-14	55
44-1802	77-8	90
44-1803	77-8	90
44-1811	80-6	23
44-1811	80-6	24
45-613	75-9	27
45-615	75-9	27
46-1001	76-25	109
46-1001	80-16	86
46-1002(3)	80-16	86

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
46-1008	76-34	142
46-1008	80-16	81
46-1008	80-16	86
46-1008	80-19	98
46-1009(2)	76-55	221
47-700	77-70	327
47-701	77-7	89
47-701	78-38	158
47-701	79-11	64
47-702	77-7	89
47-704	77-7	89
47-704	81-8	89
47-735(3)	82-7	82
Title 47, Chapter 8	78-6	20
47-800	77-7	89
47-808	79-11	64
Title 47, Chapter 16	79-11	64
47-1601	79-11	64
47-1602	79-11	64
47-1608	79-11	64
47-3727	78-20	74
48-101	78-41	173
48-603(2)	77-5	81
49-101(i)	77-35	195
49-101(q)	78-9	30
49-101 through 157	78-42	178
49-127(e)(f)	78-9	30
49-128(b)	78-9	30
49-130	77-35	195
49-158	80-21	109
49-217	75-17	51
49-218	75-69	249
49-232	85-8	46
49-233	85-8	46
49-233 through 246	79-19	116
49-245	79-19	116
49-301	83-3	36
49-306	83-3	36
49-316	79-5	35
49-319	79-19	116
49-322	79-5	35
49-330	83-3	36
49-352	84-5	48
49-401	83-3	36
49-405	83-3	36
49-407	83-3	36
49-412	83-3	36
49-423	83-3	36

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
49-501 through 918	78-42	..... 178
49-513	75-69	..... 249
49-526	77-58	..... 280
49-534	79-6	..... 38
49-578	77-58	..... 280
49-592	83-3	..... 36
49-602	77-58	..... 280
49-606	77-58	..... 280
49-645	77-58	..... 280
49-683	79-6	..... 38
49-703	75-69	..... 249
49-730	77-58	..... 280
49-801 through 849	78-42	..... 178
49-802	77-58	..... 280
49-906	75-69	..... 249
49-1001	80-24	..... 125
49-1001	80-24	..... 128
49-1001	83-3	..... 36
49-1101	83-3	..... 36
49-1102	83-3	..... 36
49-1102	84-5	..... 48
49-1102B	84-5	..... 48
49-1103	83-3	..... 36
49-1301	77-15	..... 122
49-1301	84-3	..... 29
49-1521	85-8	..... 46
49-1533	85-8	..... 46
49-1806	77-15	..... 122
49-1807	77-15	..... 122
49-1808	77-15	..... 122
49-2601	83-3	..... 36
49-2603	83-3	..... 36
49-2605	83-3	..... 36
49-2608	76-11	..... 69
49-3104	83-3	..... 36
49-3105	83-3	..... 36
49-3107	83-3	..... 36
49-3501	83-3	..... 36
49-3506	83-3	..... 36
49-3508	83-3	..... 36
49-3510	83-3	..... 36
49-3602	83-3	..... 36
49-3605	83-3	..... 36
49-3606	83-3	..... 36
49-3608	83-3	..... 36
49-3609	83-3	..... 36
49-3614	83-3	..... 36
49-3615	83-3	..... 36

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
49-3616	83-3	36
49-3618	83-3	36
49-3621	83-3	36
49-3622	83-3	36
50-101	84-4	35
50-102	77-21	145
50-204	81-7	78
50-209	80-2	5
50-209	80-2	6
50-209	80-2	7
50-209	84-4	35
50-235	79-14	81
50-301	76-3	7
50-301	79-14	81
50-302	76-69	249
50-302	76-3	7
50-302	78-42	178
50-302	84-4	35
50-302A	84-4	35
50-307	79-14	81
50-312	80-16	84
50-313	80-16	84
50-315	80-22	113
50-321	78-25	101
50-322	80-7	34
50-332	80-22	113
50-329	78-25	101
50-341	77-32	186
50-341	77-42	221
50-341	80-24	123
50-341	80-24	124
50-341	80-24	125
50-341	80-24	126
50-341	80-24	127
50-341	80-24	128
50-341(C)	80-24	122
50-341(C)	80-24	127
50-341(B)	80-24	122
50-341(B)	80-24	123
50-341(B)	80-24	125
50-341(B)	80-24	127
50-341(B)	80-24	128
50-341(B)	80-24	129
50-341(B)	80-24	130
50-341(K)	80-24	122
50-341(K)	80-24	123
50-341(K)	80-24	124
50-341(K)	80-24	127

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
50-341(K)	80-24	..... 129
50-412	77-55	..... 266
50-423	77-55	..... 266
50-602	78-25	..... 101
50-608	77-21	..... 145
50-611	78-25	..... 101
50-704	77-21	..... 145
50-705	78-25	..... 101
50-706	78-25	..... 101
50-810	78-25	..... 101
50-902	78-25	..... 101
50-904	77-1	..... 51
50-914	77-1	..... 51
50-1001 et seq.	82-14	..... 137
50-1002	79-12	..... 70
50-1003	79-12	..... 70
50-1003	80-16	..... 85
50-1006	79-12	..... 70
50-1006	80-16	..... 84
50-1007	79-14	..... 81
50-1014	79-15	..... 90
50-1016	76-40	..... 169
50-1017	80-24	..... 128
50-1018	80-16	..... 84
50-1018	80-24	..... 128
50-1019	79-14	..... 81
50-1030	79-14	..... 81
50-1030	80-9	..... 45
50-1030	80-21	..... 108
50-1032	80-9	..... 45
50-1033	80-9	..... 45
50-1043 through 1048	79-14	..... 81
50-1201	75-5	..... 14
50-1203	75-5	..... 14
50-1204	75-5	..... 14
50-1205	75-5	..... 14
50-1210	75-5	..... 14
Title 50, Chapter 13	82-5	..... 74
50-1301(3)	82-5	..... 74
50-1302	82-5	..... 74
50-1314	82-5	..... 74
50-1316	82-5	..... 74
50-1326	82-5	..... 74
50-1700	77-12	..... 110
50-1703	79-14	..... 81
50-1703	80-22	..... 113
50-1707(c)	79-7	..... 41
50-1710	79-7	..... 41

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
50-2001	81-15	..... 161
50-2003	81-15	..... 161
50-2004	81-15	..... 161
50-2006	81-15	..... 161
50-2006(2)	81-15	..... 161
50-2006(3)	81-15	..... 161
50-2007	81-15	..... 161
50-2008	81-15	..... 161
50-2011	81-15	..... 161
50-2017	81-15	..... 161
50-2018	81-15	..... 161
50-2201	79-23	..... 146
50-2701	75-18	..... 53
51-5401	77-56	..... 269
52-202	75-45	..... 157
53-500	77-62	..... 299
53-504	77-62	..... 299
53-6701	75-58	..... 211
54-100	77-24	..... 155
54-113(2)	81-11	..... 106
54-190	77-24	..... 155
54-206(1)(2)(6)	77-25	..... 159
54-208	77-25	..... 159
54-210	77-25	..... 159
54-214	77-25	..... 159
54-218	77-25	..... 159
54-309(c)(b)	77-59	..... 286
54-602	77-19	..... 138
54-1001	77-2	..... 68
54-1001B	77-59	..... 68
54-1002(1)	83-9	..... 87
54-1003(1)	83-9	..... 87
54-1003A(2)	77-2	..... 70
54-1015	85-7	..... 43
54-1017	83-9	..... 87
54-1102	78-2	..... 7
54-1202(a)(b)	77-59	..... 286
54-1401	79-18	..... 112
54-1402	79-18	..... 112
54-1402(b)(d)	77-60	..... 289
54-1404(7)(9)	77-60	..... 289
54-1407	77-60	..... 289
54-1411	79-18	..... 112
54-1415	77-60	..... 289
54-1732	79-18	..... 112
54-1803	75-47	..... 167
54-1803	77-60	..... 289
54-1804(e)	77-60	..... 289

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
54-1806	75-47	167
54-1806(2)	77-60	289
54-1813	75-47	167
Title 54, Chapter 19	83-9	87
54-1900	77-11	109
54-1901	75-60	217
54-1901	81-11	106
54-1901(b)	81-11	106
54-1902	75-60	217
54-1902	78-2	7
54-1902	81-11	106
54-1903	77-42	221
54-1903	78-2	7
54-1904	81-11	106
54-1920	81-11	106
54-1924	81-11	106
54-2630	85-7	43
54-2901(f)	77-5	81
54-2904	77-5	81
54-2909(b)(1)(2)(3)(4)	77-5	81
54-2912(b)(3)(E)	77-5	81
55-101	76-22	97
55-1509	76-22	97
55-1514	76-22	97
Title 55, Chapter 19	82-5	74
55-1901	82-5	74
56-201	81-1	41
56-201(e)	85-10	56
56-202	81-1	41
56-203A	85-10	56
56-203B	85-10	56
56-203C	85-10	56
56-203D(1)(a)	85-10	56
56-204	77-56	269
56-209	80-14	70
56-209(b)	80-14	73
56-209(b)	80-30	177
56-209(b)	81-1	41
56-209(b)(3)	85-10	56
56-209(c)	80-14	72
56-209(c)	80-14	73
56-209(c)	80-30	177
56-217	77-56	269
56-221	81-1	41
56-222	81-1	41
56-231	77-43	224
57-102	75-24	72
57-104	82-4	66

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
57-105	75-6	17
57-111	75-24	72
57-111	82-4	66
57-127	75-24	72
57-127	82-4	66
57-127(A)	82-4	66
57-128	75-24	72
57-128	82-4	66
57-130	82-4	66
57-131	82-4	66
57-134	82-4	66
57-135	82-4	66
57-139	82-4	66
57-140	82-4	66
57-145	82-4	66
57-200	77-12	110
57-701	75-25	73
57-715	79-8	46
57-715	80-18	93
57-720	79-8	46
57-720	80-18	92
57-720	80-18	93
57-721	79-8	46
57-722	80-18	93
57-722	80-18	94
57-722	85-4	20
57-722(1) through (8)	82-7	82
57-722(3)(b)	85-4	20
57-722(8)	85-4	20
57-724	79-8	46
57-724	85-4	20
57-725	79-8	46
57-801 et seq.	77-67	318
57-803	85-3	14
57-803(1)(a)	82-8	97
57-803(a)(n)	85-3	14
57-804	85-3	14
57-804(2)	82-8	97
57-804(2)	85-3	14
57-1101	77-6	85
57-1105	80-1	1
57-1105	80-1	2
57-1105(A)	80-1	2
57-1108	80-1	1
57-1108	80-1	2
57-1403	78-3	12
57-1404	78-3	12
57-2701	75-56	204

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
57-6701	75-56	..... 204
Title 58	79-11	..... 64
Title 58, Chapter 1	78-28	..... 114
58-101	78-38	..... 158
58-104	82-3	..... 52
58-104(8)	82-3	..... 52
58-104(9)	83-6	..... 69
58-104.4	78-38	..... 158
58-105	81-8	..... 89
58-108	81-17	..... 170
58-119(3)	82-3	..... 52
58-132	82-3	..... 52
58-132	82-10	..... 110
58-138	82-3	..... 52
58-138	82-10	..... 110
58-140	81-14	..... 154
58-140	85-3	..... 14
58-142	83-6	..... 69
58-144	83-6	..... 69
58-145	83-6	..... 69
58-146	83-6	..... 69
58-147	83-6	..... 69
58-151	83-6	..... 69
58-152	83-6	..... 69
58-153	83-6	..... 69
58-304	81-8	..... 89
58-304	82-3	..... 52
58-307	81-8	..... 89
58-310	81-8	..... 89
58-313	83-2	..... 30
58-314	75-32	..... 100
58-316	78-38	..... 158
58-331	77-64	..... 304
58-331	82-3	..... 52
58-331	83-9	..... 30
58-332	77-64	..... 304
58-332	83-9	..... 30
58-403	84-9	..... 85
58-603	75-32	..... 100
58-603	76-14	..... 74
59-201	75-25	..... 73
59-201	76-66	..... 282
59-503	76-16	..... 82
59-511	75-41	..... 144
59-512	75-58	..... 211
59-513	78-1	..... 1
59-904	79-3	..... 26
59-904	81-3	..... 59

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
59-904(b)	81-3	59
59-904(c)	81-3	59
59-904(d)	81-3	59
59-906	76-8	57
59-912	77-21	145
Title 59, Chapter 10	78-43	183
59-1009	77-52	250
59-1009	78-23	93
59-1009	81-1	41
59-1015	82-11	117
59-1015	83-3	36
59-1017	82-11	117
59-1026	80-24	122
59-1026	80-24	123
59-1026	80-24	124
59-1026	80-24	126
59-1026	80-24	127
59-1026	80-24	128
59-1107	75-3	8
59-1115	77-63	303
59-1205	75-3	8
59-1206	75-3	8
59-1207	75-3	8
59-1208	75-3	8
59-1209	75-3	8
59-1210	75-3	8
59-1211	75-3	8
59-1212	75-3	8
59-1301	78-27	111
59-1301	82-7	82
59-1302(31)	80-28	153
59-1305	82-7	00
59-1328	82-7	82
59-1337	82-7	82
59-1350	78-27	111
59-1602	81-17	170
59-1605	80-28	150
61-201	79-3	26
61-206	81-17	170
61-622	75-30	97
Title 63	79-14	81
63-101	76-44	178
63-101	77-35	195
63-101A	78-37	148
63-101B	78-37	148
63-102	75-66	239
63-102	76-38	163
63-102	77-48	237

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
63-102	78-37	..... 148
63-102	79-1	..... 20
63-102	79-16	..... 97
63-102	85-1	..... 5
63-105	75-14	..... 45
63-105BB	76-38	..... 163
63-105T	76-44	..... 178
63-105Y	76-37	..... 159
63-105Y	80-8	..... 41
63-105Y	80-8	..... 43
63-107	76-38	..... 163
63-108	76-22	..... 97
63-109	76-22	..... 97
63-110	76-22	..... 97
63-111	79-16	..... 97
63-111	81-12	..... 113
63-112	80-8	..... 37
63-112	80-8	..... 38
63-112	80-8	..... 39
63-112	80-8	..... 40
63-112	80-8	..... 41
63-112	80-8	..... 42
63-112	80-8	..... 43
63-112(1)(a)	80-8	..... 39
63-112(1)(a)(i)	80-8	..... 38
63-112(1)(b)	80-8	..... 39
63-112(3)	80-8	..... 42
63-117	75-33	..... 102
63-118	75-33	..... 102
63-119	75-33	..... 102
63-120	75-33	..... 102
63-121	75-33	..... 102
63-123	75-33	..... 102
63-124	75-33	..... 102
63-125	75-33	..... 102
63-140	77-35	..... 195
63-202	77-47	..... 235
63-202	79-16	..... 97
63-202	79-17	..... 105
63-202	80-3	..... 9
63-202	80-3	..... 11
63-202	80-8	..... 38
63-202	80-8	..... 39
63-202	80-8	..... 40
63-202	81-12	..... 113
63-202A	76-22	..... 97
63-202A	81-12	..... 113
63-220	79-12	..... 70

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
63-221	79-15	90
63-221	81-6	76
63-306	81-12	113
63-307	77-52	250
63-307	78-23	93
63-308	77-52	250
63-308	78-23	93
63-315	83-8	84
63-322	81-12	113
63-405	76-38	163
63-510	81-17	170
63-513	80-8	40
63-513	80-13	68
63-513	81-12	113
63-513(5)	81-12	113
63-513(9)	76-38	163
63-513(b)	80-8	40
63-621	75-50	183
63-621	79-15	90
63-624	78-37	148
63-624A	78-37	148
63-625	75-50	183
63-626	75-50	183
63-901	75-50	183
63-901	78-37	148
63-901	79-1	20
63-907	75-39	123
63-908	77-56	269
63-911	79-15	90
63-911	80-16	82
63-913	79-15	90
63-918	75-67	241
63-918	76-37	159
63-921	79-17	105
63-922	77-63	303
63-923	79-12	70
73-923	79-16	97
63-923	79-17	105
63-923	80-3	9
63-923	80-8	40
63-923	80-16	84
63-923	81-6	76
63-923	82-14	137
63-923(1)(a)(b)	79-7	41
63-923(2)	81-12	113
63-1051	75-29	91
63-1058	75-34	105
63-1102	75-50	183

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
63-1102	76-38	..... 163
63-1102	79-22	..... 137
63-1119	83-8	..... 84
63-1302	75-50	..... 183
63-1502	76-33	..... 138
63-2201(A)	80-21	..... 107
63-2201(A)	80-21	..... 108
63-2201(A)	80-21	..... 109
63-2201(A)	80-21	..... 110
63-2201(A)	80-21	..... 111
63-2220	79-12	..... 70
63-2220	79-15	..... 90
63-2220	79-17	..... 105
63-2220	80-13	..... 61
63-2220	80-13	..... 65
63-2220	80-13	..... 66
63-2220	80-16	..... 83
63-2220	80-16	..... 84
63-2220	82-14	..... 137
63-2220(1)(a)	80-13	..... 60
63-2220(1)(b)	80-13	..... 60
63-2220(3)	80-13	..... 60
63-2503	76-57	..... 231
63-2506	76-57	..... 231
63-3001 et seq.	82-14	..... 137
63-3002	84-10	..... 87
63-3004	84-10	..... 87
63-3022	75-40	..... 125
63-3022	84-10	..... 87
63-3076	77-41	..... 219
63-3076	77-43	..... 224
63-3101	79-15	..... 90
63-3101	80-16	..... 80
63-3101	80-16	..... 81
63-3102	80-16	..... 81
63-3104	78-40	..... 166
63-3104	80-16	..... 81
63-3105	78-40	..... 166
63-3105	79-17	..... 105
63-3609	75-64	..... 229
63-3609	84-2	..... 25
63-3612	84-2	..... 25
63-3613(a)	84-2	..... 25
63-3616	84-2	..... 25
63-3619	75-64	..... 229
63-3619(d)	84-2	..... 25
63-3620	77-41	..... 219
63-3638	75-14	..... 45

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
63-3638	80-4	13
63-3638(e)	80-4	13
63-3638(e)	80-4	15
63-3638(e)	80-4	17
63-3638(<i>r</i>)	76-37	159
65-1504(1932)	82-11	117
65-5711	78-2	7
66-356	76-52	209
66-414	85-10	56
66-1303	79-18	112
66-1312	79-18	112
67-302	78-21	81
67-303	77-21	145
67-412(5)	75-40	125
67-413	75-40	125
67-432	75-1	1
67-433	75-1	1
67-435	75-1	1
67-435	81-13	125
67-435(6)	81-13	125
67-437	75-1	1
67-438	75-1	1
67-439	75-1	1
67-454	84-11	93
67-510	76-28	118
67-510	76-31	132
67-510	76-48	194
67-510	83-4	56
67-802	78-32	126
Title 67, Chapter 10	78-43	183
67-1001	82-2	49
67-1001	83-4	56
67-1001(6)	82-2	49
67-1001(14)	76-16	82
67-1011	83-7	76
67-1018	78-32	126
67-1018	80-28	153
67-1022	76-16	82
67-1034	78-43	183
67-1036	80-28	153
67-1201	82-4	66
67-1202	82-4	66
67-1203	82-4	66
67-1204	82-4	66
67-1205	82-4	66
67-1206	82-4	66
67-1207	82-4	66
67-1208	82-4	66

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-1209	82-4	66
67-1210	75-48	175
67-1210	77-51	248
67-1210	77-61	297
67-1210	77-67	318
67-1210	78-43	183
67-1210	79-8	46
67-1210	82-4	66
67-1210	82-7	82
67-1210	85-3	14
67-1210(a) through (h)	82-7	82
67-1211	82-4	66
67-1212	77-67	318
67-1212	82-4	66
67-1212	83-7	76
67-1213	82-4	66
67-1214	82-4	66
67-1215	82-4	66
67-1216	82-4	66
67-1217	82-4	66
67-1218	82-4	66
67-1219	82-4	66
67-1220	82-4	66
67-1221	82-4	66
67-1301	75-48	175
67-1401	75-48	175
67-1910(4)	78-32	126
67-1911	78-32	126
67-2007	78-45	193
67-2022	77-61	297
67-2024	80-28	153
67-2301	75-2	2
67-2309	78-18	67
67-2310	77-24	155
67-2310	81-11	106
67-2310	83-9	87
67-2326	76-34	142
67-2326	76-43	176
67-2326	82-4	66
67-2326 through 2333	78-42	178
67-2326 through 2333	80-24	128
67-2327	76-34	142
67-2327	77-18	136
67-2327	80-5	19
67-2327	80-5	20
67-2327	82-4	66
67-2328	76-34	142
67-2328	82-4	66

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-2328	77-18	..... 136
67-2328	77-20	..... 141
67-2329	76-34	..... 142
67-2329	82-4	..... 66
67-2330	76-34	..... 142
67-2330	82-4	..... 66
67-2331	76-34	..... 142
67-2331	77-18	..... 136
67-2331	82-4	..... 66
67-2332	76-34	..... 142
67-2332	77-18	..... 136
67-2332	82-4	..... 66
67-2333	76-34	..... 142
67-2333	77-18	..... 136
67-2333	77-56	..... 269
67-2333	78-26	..... 108
67-2333	80-5	..... 19
67-2333	80-24	..... 20
67-2333	82-4	..... 66
67-2337	80-2	..... 5
67-2337	80-2	..... 6
67-2337	80-2	..... 7
67-2338 as amended by H.B. 257	77-44	..... 226
67-2339	78-11	..... 39
67-2340	75-7	..... 22
67-2340	77-13	..... 115
67-2340	77-66	..... 314
67-2340	81-15	..... 161
67-2340 through 2346	77-30	..... 180
67-2341(1)(a)	85-9	..... 50
67-2341(3)	81-15	..... 161
67-2341(3)(a)	85-9	..... 50
67-2341(4)(5)	85-9	..... 50
67-2341(5)	77-66	..... 314
67-2341(5)	81-15	..... 161
67-2341(5)(a)	81-15	..... 161
67-2341 et seq.	85-9	..... 50
67-2342	77-66	..... 314
67-2342	81-15	..... 161
67-2342(1)	85-9	..... 50
67-2344	81-15	..... 161
67-2345	77-13	..... 115
67-2345	77-66	..... 314
67-2345	78-25	..... 101
67-2345	81-15	..... 161
67-2345(1)	81-15	..... 161
67-2345(1)(c)	81-15	..... 161
67-2345(1)(d)	85-9	..... 50

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-2345(l)(f)	81-15	..... 161
67-2345(3)	85-9	..... 50
67-2346	77-13	..... 115
67-2346	81-15	..... 161
67-2347	81-15	..... 161
67-2347	85-9	..... 50
67-2402	82-10	..... 110
67-2405	79-25	..... 155
67-2405	80-6	..... 23
67-2405	81-17	..... 170
67-2405(9)	81-17	..... 170
67-2508	75-58	..... 211
67-2510	76-34	..... 142
67-2739	80-17	..... 88
67-2742	78-43	..... 183
67-3203	75-48	..... 175
67-3416	81-13	..... 125
Title 67, Chapter 35	82-11	..... 117
Title 67, Chapter 35	85-7	..... 43
67-3503	75-1	..... 1
67-3503	85-7	..... 43
67-3505	85-7	..... 43
67-3507	85-7	..... 43
67-3508	76-34	..... 142
67-3508	80-28	..... 151
67-3508	82-11	..... 117
67-3511	76-34	..... 142
67-3511	76-65	..... 276
67-3511	82-11	..... 117
67-3511	83-3	..... 36
67-3511(1)(2)(3)	82-11	..... 117
67-3512	80-19	..... 100
67-3512	80-20	..... 103
67-3512	80-20	..... 104
67-3512	80-20	..... 105
67-3513	75-1	..... 1
67-3514	81-13	..... 125
67-3514	85-7	..... 43
67-3516	75-37	..... 113
67-3516	76-65	..... 276
67-3516	82-8	..... 97
67-3516	82-11	..... 117
67-3516	85-7	..... 43
67-3520	82-8	..... 97
67-3522	82-8	..... 97
67-3523	75-37	..... 113
67-3523	76-65	..... 276
67-3530	85-7	..... 43

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-3603	76-65	..... 276
67-3605	75-37	..... 113
67-3605	76-65	..... 276
67-3605	82-8	..... 97
67-3607	75-48	..... 175
67-3608	76-65	..... 276
67-3608	77-69	..... 324
67-3609	76-65	..... 276
67-3611	77-69	..... 324
67-3663	76-65	..... 276
67-4202	80-1	..... 3
67-4222(c)	81-17	..... 70
67-4227	82-3	..... 52
67-4304	83-6	..... 69
67-4912	75-6	..... 17
67-4927	75-19	..... 58
67-5101	76-23	..... 101
67-5102	76-23	..... 101
67-5201	76-64	..... 273
67-5201 et seq.	85-10	..... 56
67-5201(7)	81-4	..... 67
67-5202(2)	76-64	..... 273
67-5202(b)	76-64	..... 273
67-5211	76-46	..... 183
67-5212	78-12	..... 44
67-5217	78-12	..... 44
67-5217	80-8	..... 40
67-5218	78-12	..... 44
67-5218	80-8	..... 40
67-5301	76-64	..... 273
67-5301	79-25	..... 155
67-5302(12)	81-17	..... 170
67-5302(14)	81-17	..... 170
67-5303	76-64	..... 273
67-5303	79-25	..... 155
67-5309	76-64	..... 273
67-5309	78-8	..... 25
67-5309	79-25	..... 155
67-5309(9)	81-17	..... 170
67-5309(a)	78-16	..... 60
67-5309(b)	81-17	..... 170
67-5309(c)	78-39	..... 163
67-5309(i)	78-16	..... 60
67-5309A	76-48	..... 194
67-5309A	79-25	..... 155
67-5309B	76-48	..... 194
67-5309B	79-25	..... 155
67-5309B	81-17	..... 170

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-5309B(a)(e)	78-16	..... 60
67-5309B(d)	76-48	..... 194
67-5309C	79-25	..... 155
67-5309C(c)	77-27	..... 167
67-5315	80-28	..... 151
67-5316	76-48	..... 194
67-5316	78-16	..... 60
67-5316	79-25	..... 155
67-5326	75-41	..... 144
67-5326	76-47	..... 188
67-5326	81-17	..... 170
67-5327	77-16	..... 125
67-5327(c)	76-47	..... 188
67-5327(e)	76-47	..... 188
67-5328	77-16	..... 125
67-5328	81-17	..... 170
67-5328(a)	76-47	..... 188
67-5328(d)	76-47	..... 188
67-5329	76-47	..... 188
67-5329	81-17	..... 170
67-5330	76-47	..... 188
67-5330	77-16	..... 125
67-5330	81-17	..... 170
67-5332	78-39	..... 163
67-5332	80-28	..... 151
67-5332	81-17	..... 170
67-5333	80-28	..... 150
67-5333	80-28	..... 151
67-5333	31-17	..... 170
67-5333(7)	80-28	..... 150
67-5334	80-28	..... 151
67-5334	81-17	..... 170
67-5335	81-17	..... 170
67-5338	80-28	..... 150
67-5338	80-28	..... 151
67-5705 to 5713	77-13	..... 115
67-5706	82-3	..... 52
67-5707	75-48	..... 175
67-5708	82-3	..... 52
67-5709	75-48	..... 175
67-5710	77-6	..... 85
67-5710	78-18	..... 67
67-5711	75-48	..... 175
67-5711	77-6	..... 85
67-5711	78-18	..... 67
67-5712	77-6	..... 85
67-5715	77-32	..... 186
67-5716	76-34	..... 142

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-5716(5)	77-17	129
67-5716(15)	77-17	129
67-5716(15)	77-69	324
67-5717	77-69	324
67-5718	76-34	142
67-5726	78-8	25
67-5734	78-8	25
67-5740(e)	82-3	52
67-5751	81-1	41
67-5751	85-6	38
67-5752	85-6	38
67-5753	85-6	38
67-5757	85-8	38
67-5901	78-11	39
67-5906(8)	78-11	39
67-5906(12)	78-11	39
Title 67, Chapter 61	75-58	211
67-6201	80-4	17
67-6202	80-4	15
67-6203	80-4	15
67-6206	82-3	52
67-6210	80-4	15
67-6211	80-4	14
67-6215	80-4	14
67-6215(A)	80-4	15
67-6215(A)	80-4	16
67-6223(A)	80-4	15
67-6224	80-4	15
67-6224	80-4	16
67-6401	76-35	147
67-6401	76-39	165
67-6401 et seq.	77-49	239
67-6402(f)	83-2	30
67-6404	83-2	30
67-6409	82-3	52
67-6409	83-2	30
67-6409(g)	83-2	30
67-6410	83-2	30
67-6410(a)(b)(c)	83-2	30
67-6421	83-2	30
67-6423	83-2	30
67-6424	83-2	30
Title 67, Chapter 65	78-7	23
67-6500	77-10	96
67-6500	77-14	119
67-6500	77-22	147
67-6501	81-18	175
67-6501	83-6	69

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
67-6503	81-18	175
67-6503(i)(j)(k)	83-6	69
67-6504	75-42	148
67-6504	76-27	116
67-6504(a)	76-27	116
67-6506	76-15	77
67-6508	81-18	175
67-6508	83-6	69
67-6509	75-42	148
67-6509	81-18	175
67-6509	82-6	77
67-6509(a)	82-6	77
67-6509(b)	82-6	77
67-6511	75-42	148
67-6511	81-18	175
67-6514	76-27	116
67-6525	82-6	77
67-6528	77-37	204
67-6601	77-29	172
67-6601	83-6	69
67-6602	77-29	172
67-6603	77-29	172
67-6605	77-29	172
67-6606	77-29	172
67-6607	77-29	172
67-6612	77-29	172
Title 68, Chapter 4	82-7	82
68-401	82-7	82
68-402	82-7	82
68-404	82-7	82
68-405	82-7	82
68-406	82-7	82
68-407	82-7	82
Title 68, Chapter 5	78-43	183
68-501	82-7	82
68-502	82-7	82
68-503	82-7	82
68-504	82-7	82
68-505	82-7	82
68-506	82-7	82
69-520	84-6	54
70-1101	80-7	33
70-1102	80-7	34
70-1103	80-7	34
70-1501	80-7	34
70-1502	80-7	34
70-1610	82-3	52
70-1617	82-3	52

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
70-1702	80-7	34
70-1901	80-7	34
72-102(9)	78-17	63
72-203	78-22	86
72-205	78-22	86
72-212	78-17	63
78-212	78-22	86
72-428(6)	77-28	171
72-433(3)	77-28	171
72-450	77-28	171
72-501(a)	77-28	171
72-523(4)	77-28	171
72-901	82-7	82
72-901	82-8	97
72-902	82-8	97
72-910	82-7	82
72-911	82-7	82
72-912	80-18	94
72-912	82-3	52
72-912	82-7	82
72-927	80-18	95
72-1302(A)	76-60	247
72-1212(B)	76-60	247
72-1302(b)	84-11	93
72-1315	76-60	247
72-1315	78-30	119
72-1316	76-60	247
72-1316	78-30	119
72-1316A	78-30	119
72-1322C	78-30	119
72-1324	76-60	247
72-1328(A)	76-60	247
72-1333(b)	84-11	93
72-1335	82-7	82
72-1342	76-60	247
72-1346	83-7	76
72-1351	76-60	247
72-1367	76-60	247
72-1401	82-7	82
72-1402	76-36	155
72-1404	80-18	95
72-1405	77-57	278
72-1405	80-18	95
72-1411	78-31	122
72-1412	78-31	122
72-1428	76-29	126
72-1432B	78-31	122
73-101	75-42	148

TEN-YEAR OPINIONS 1975-1985 IDAHO CODE CITATIONS

CODE	OPINION	PAGE
73-101	76-28	..... 118
73-101	76-31	..... 132
76-101	76-36	..... 155
73-101	76-59	..... 243
73-102	76-19	..... 90
73-102	76-36	..... 155
73-102	77-32	..... 186
73-102(2)	83-5	..... 61
73-110	77-54	..... 256
73-116	76-28	..... 118
73-116	80-2	..... 5
73-206	76-30	..... 130
73-211	76-30	..... 130
74-1416	80-18	..... 94
Idaho Criminal Rule 32(g)	85-9	..... 50

**TEN-YEAR
Topic Index
and
TABLE OF STATUTES CITED
SELECTED INFORMAL GUIDELINES
1975-1985**

The index in this volume is cumulative, but no attempt has been made to update the opinions or guidelines themselves. They stand as written at the time. The reader should check subsequent opinions, statutory amendments and evolving case law to be assured that the opinions still reflect the current state of the law.

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
ADMINISTRATION		
Authority of Deferred Compensation Committee to consider late bids.	2-06-80	208
Authority of Governor to appoint administrators of divisions created by administrative action.	3-10-80	227
Whether state agencies are free to release necessary information to risk manager to defend against tort claims.	2-27-84	117
AGRICULTURE		
Effect of Right to Farm Bill on existing ordinances.	9-30-81	246
Applicability of egg assessment levy through LDS welfare program.	1-05-82	151
Bill prohibiting trespass by vehicles on private land devoted to agriculture constitutional.	3-02-82	177
Effect of 1983 amendments to statute requiring brucellosis vaccinations for certain cattle.	8-22-83	222
AMBULANCES		
Ambulance services discussed.	8-08-79	211
ANIMALS		
Idaho laws regarding scientific experiments.	4-05-85	146
ASSOCIATIONS		
Auditing of horse breeding associations.	7-07-82	188
CITIES		
Conflict of interest by city council.	11-20-79	245
City-owned property cannot be encumbered by mortgage. .	11-26-79	247
City payment to mayor, over and above salary, for bookkeeping services on city sewer project unlawful.	2-25-81	201
State law takes precedence over local law.	2-22-82	170

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Determination of cities' and counties' share of fiscal 1983 liquor revenues.	9-16-82	198
Power of city to expend public funds for purposes of advertising and promoting city.	3-14-83	177
Cities liable for costs of housing prisoners arrested by city police officers on charges of driving without privileges, driving under the influence and related motor vehicle offenses. . . .	3-21-84	136
No city or county may unilaterally withdraw from area of city impact agreement. Such agreements may be renegotiated. .	11-30-84	181
 COMMISSIONS AND BOARDS		
Horse Racing Commission		
Distribution of receipts collected by Idaho Horse Racing Commission.	4-02-82	184
Promoting industry is not a function of Horse Racing Commission.	9-03-82	194
Commission on the Arts		
Proposed Commission on the Arts rule conditioning the grant of funds upon content of material presented may be unconstitutional infringement of first amendment rights.	5-24-85	120
 CORRECTIONS		
Appeal of capital cases stays execution, not confinement requirements.	7-08-80	247
Time of parole eligibility for persons sentenced to life imprisonment between July 1, 1971 and July 1, 1980.	7-06-83	212
Law requiring payment of costs of probation or parole supervision not to be applied retroactively.	5-25-84	151
Correctional Industries may sell inmate made goods to governmental and non-profit institutions wherever located, and to retail and wholesale establishments within the state. . . .	10-21-85	144
 COUNTIES		
Discussion of County Assistance Act relative to criminal liability for not disclosing resources. Constitutionality of liens on property.	3-05-79	189

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Duty of county recorder to insure valid acknowledgments. .	5-21-79	198
County construction of sewers in non-incorporated areas. . .	8-15-79	216
County Extension agent cannot contract for sale of real property with county commissioners.	9-27-79	221
Ramification of county personnel ordinance attempting to create county-wide "civil service" or "merit" systems.	12-12-79	248
Authority of county commissioners to lease or sell county hospital.	2-06-80	214
Local law cannot override or change state law.	2-22-82	170
Extension, alteration or repair of existing structure as ordinary and necessary expense not subject to indebtedness limitations of Idaho Constitution.	3-27-84	141
Nocity or county may unilaterally withdraw from area of city impact agreement. Such agreements may be renegotiated. .	11-30-84	181
 DAY CARE		
Proposed legislation for licensure discussed.	2-04-85	95
County administered programs affect only unincorporated areas of county and thus have no effect within municipalities.	2-04-85	91
 DISTRICTS		
Auditorium		
Greater Boise Auditorium District discussed.	7-17-85	130
Fire Protection		
Fire Protection Districts not authorized to maintain ambulance services.	8-08-79	211
Collection of fire protection fees from fire protective association and districts.	6-02-82	186
 See Public Lands		
Recreation		
No bond requirement for election to dissolve recreation district.	7-13-81	237

TOPIC	DATE	PAGE
School Districts		
See Education		
Sewer		
Expending public funds to connect private residences to public sewer system constitutional.	1-30-81	192
 EDUCATION		
Employer cannot make employee's contribution to retirement fund.	9-28-79	225
Authority of legislature to repeal charter and impact of one-percent initiative on specially-chartered school districts. ...	2-01-80	203
Definition of and applicability of tuition.	2-04-80	205
Discipline of students in Idaho's public schools.	3-13-81	210
Negotiation process for public school districts and their professional employees in relation to joint ratification of settlement in open meetings.	6-09-81	231
Authority of School Board to determine location for graduation ceremonies.	8-26-81	244
Constitutionality of providing transportation services of public districts to students of private and parochial schools. ...	12-11-81	252
Residency requirements for tuition purposes when one is separated from armed services.	1-25-82	154
School district trustees authorized to establish public library, and to act as trustees and levy taxes therefor. Total separation between school district and library funds.	2-14-84	111
Junior college districts are not "school districts" and may not have social security employer's share paid by State Auditor.	3-19-84	132
School districts' unused operation and maintenance funds in succeeding fiscal years.	3-26-84	139
Professional Studies Program discussed.	6-19-84	156
Procedures for discontinuing a school.	3-25-85	113

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Historical Society		
Treatment of interest earned on Historical Society assets. . .	12-10-82	209
Vocational Rehabilitation		
Legal alien eligible for assistance under end-stage renal pro- gram.	5-01-84	148
 ELECTED OFFICIALS		
Governor		
Authority of Governor to appoint administrators of divisions created by administrative action.	3-10-80	227
Source and extent of Governor's veto power.	2-22-83	157
Lieutenant Governor		
Both during legislative sessions and in the interim Lieutenant Governor is entitled to unvouchered per diem expense allow- ance equal to that of speaker of house of representatives. . .	1-17-84	107
 ELECTIONS		
Procedures for budget freeze override elections.	5-07-79	196
Payment of election costs by initiative and referendum peti- tioners.	5-31-79	202
Procedures to be followed by Senate in judging contest of elections.	12-04-80	258
Legislative authority to enact qualifications for state legisla- tive elections in addition to those in Idaho Constitution. . . .	7-08-81	235
Amendment to provide for special elections for referenda falls within scope of Governor's call.	7-17-81	239
Meaning of term "state candidate" in determining body with authority to fill vacancies.	2-26-85	109
 EMPLOYMENT		
Right to Work Bill would have had little effect on purchase negotiations of Bunker Hill.	1-28-82	156
Conflict between Right to Work and right of employees to organize.	2-19-82	168
Veterans preferences to disabled war veterans.	3-25-82	182

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Effect of constitutional and statutory provisions on ability of Department of Employment to borrow money from federal government for payment of unemployment claims.	4-04-83	192
Legal resident aliens have a constitutional right to become notaries public.	6-26-84	158
ENDOWMENT LANDS		
Restrictions upon investment made by the Board.	10-29-79	227
Sale of school endowment lands for future site of hydro-electric project.	10-28-82	203
Monies from "ten percent fund" must be expended for improvements on same endowment land grant from which they derived and on no other.	11-28-84	178
Recovery of timber sale administrative expenses from endowment trust proceeds.	1-10-85	77
FISH AND GAME		
Authority of Department of Fish and Game to enter into cooperative road closure agreements.	2-22-84	115
Distribution of brochure by Department to promote primarily private activities is improper under public purpose doctrines of Idaho Constitution.	8-07-84	161
Hunting permit lottery unconstitutional.	8-15-84	165
Conditions under which Idaho residents lose their resident hunting and fishing privileges while absent from state. . . .	9-18-85	139
HEALTH AND WELFARE		
Dissolved oxygen water quality standards.	1-22-80	198
Authority of Health and Welfare to pay entire cost of prescription drug bill of Medicaid recipients in nursing homes.	7-18-80	249
One-percent initiative and budget freeze statute do not repeal or supersede health district sixty-seven percent matching fund levy requirement.	2-05-81	195
Restrictions by Health and Welfare Board and South Central Health District on city's power to permit building units with septic tanks on lots smaller than required minimum.	5-01-81	226

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Legality of midwifery and birth registration requirements with Bureau of Vital Statistics.	10-06-81	248
Compliance with management practices under Forest Practices Act and compliance with water quality standards. ...	12-30-81	255
Use and distribution of monies by Joint Finance and Appropriations Committee pursuant to Idaho Conservation League's "Quarter for Clean Air Program".	2-01-82	157
Effect upon contract between attorney and Bureau of Child Support Services by election of attorney's spouse to legislature.	6-28-83	209
Constitutionality of certain provisions of Idaho abortion and informed consent statutes.	8-02-83	218
Department rules and regulations governing agreements between state and federal governments in cooperative medical assistance programs.	2-29-84	119
Department of Health and Welfare must have consent or a warrant before entering private property to investigate pollution violations.	3-01-84	121
Meaning of term "public place" as used in Clean Indoor Air Act.	2-12-85	101
Fees intended to reimburse costs incurred by District Board of Health are "rules".	4-12-85	114
Children's Trust Account Board's powers and duties.	11-14-85	145
Issuance of continuing garnishment to employer of parent delinquent on support obligation.	12-19-85	147
HOSPITALS		
Authority of county commissioners to lease or sell county hospital.	2-06-80	214
INDIANS		
Dog control ordinances of cities located on Indian reservations.	12-10-81	251
Authority of Department of Law Enforcement to enter into cooperative agreements with Indian tribes.	3-01-82	175

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
State of Idaho owns beds of Snake and Blackfoot Rivers if rivers were navigable at time of statehood and if Fort Bridger Treaty extinguished prior to statehood any aboriginal title claimed by Shoshone-Bannock Tribes.	11-06-84	168
INSURANCE		
Constitutionality of legislation limiting insurance coverage for elective abortions.	2-28-83	165
JUDICIAL		
Legality of accepting honorariums for professional services to another state agency.	10-15-79	230
Remedies available to ensure sufficient funding for courts, absent adequate appropriation.	2-09-83	145
Propriety of diverting surplus money in District Court Fund to other departments.	2-09-83	145
LABOR AND INDUSTRIAL SERVICES		
Idaho Industrial Commission has no legal authority to waive, reduce or negotiate statutory penalties.	4-14-81	216
Applicability of prevailing wage laws to construction of health facilities.	4-21-81	218
Department of Labor and Industrial Services has no jurisdiction to make determinations regarding bargaining representatives for public sector employees.	10-30-84	167
LAW ENFORCEMENT		
Collection of fees against defendants by sheriff.	2-15-79	187
Liability for receiving property believed stolen after recovery by police.	7-17-79	208
Department of Law Enforcement has authority to transfer and issue new titles on lien-sold vehicles.	11-07-79	239
Commencement of juvenile proceedings in county of unlawful conduct.	1-17-80	195
Validity of curfew ordinances.	2-15-80	217
Naturopathic physician is precluded by Idaho law from practicing naturopathy.	4-03-81	214

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Elderly Abuse Bill added scope to present criminal statutes.	1-22-82	153
Highway User Funds may not be used for direct or administrative costs of Criminal Investigation Bureau, State Brand Board or Horse Racing Commission.	2-08-82	159
Authority of Department of Law Enforcement to enter into cooperative agreements with Indian tribes.	3-01-82	175
Constitutionality of Traffic Infractions Act in eliminating certain circumstances of the right to jury trial.	3-08-82	178
Department of Law Enforcement commissioning of special deputies to work for Department of Transportation at port of entry.	9-22-82	200
Extent of prosecutor discretion in bringing criminal actions and granting immunity from prosecution.	3-10-83	168
Constitutionality of statute requiring persons convicted of driving under the influence to obtain an alcohol evaluation.	7-21-83	215
State police operations may be funded by fuel taxes or motor vehicle registration fees only to extent such operations relate directly to enforcement of highway safety and traffic laws.	2-03-84	109
Cities are liable for costs of housing prisoners arrested by city police officers for motor vehicle offenses.	3-21-84	136
Sheriff's department's accident report is "public record" subject to disclosure to and copying by any interested citizen. .	12-03-84	183
Possession of slot machines.	2-26-85	107
Constitutional for police officers to issue summons by ticketing illegally parked vehicles.	3-04-85	110
Duty of police officers to enforce handicap parking privileges applies to private as well as public parking areas.	3-04-85	110
Implied consent law is applicable to all drivers of motor vehicles.	6-03-85	127
The state fire marshal is a law enforcement official having arrest powers in arson cases.	8-29-85	137

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
LEGISLATURE		
Power of legislature to modify citizens' compensation committee's recommended legislative pay raise.	1-22-79	176
Effective date of concurrent resolutions.	1-25-79	179
Constitutionality of exacting real property lien from indigency aid recipients.	3-05-79	189
Authority of legislature to repeal charter and impact of one-percent initiative on specially-chartered school districts. ...	2-01-80	203
Legislature may overturn rate schedule handed down by I.P.U.C..	2-20-80	222
Legislative authority to act on items not specified in Governor's proclamation for extra session.	5-13-80	243
Legislature may not reconsider, amend or modify appropriation measures of Second Regular Session.	5-13-80	245
Procedures to be followed by Senate in judging contest of elections.	12-04-80	258
Legislative authority during its organizational session.	12-05-80	251
One-percent initiative and budget freeze statute do not repeal or supersede health district sixty-seven percent matching fund levy requirement.	2-05-81	195
Discipline of students in Idaho's public schools.	3-13-81	210
Legislative authority to enact qualifications for state legislative elections in addition to those in Idaho Constitution. ...	7-08-81	235
Age qualifications to serve as a legislator and the scope of the Governor's call.	7-10-81	236
Amendment to provide for special election for referenda falls within scope of Governor's call.	7-17-81	239
Selective release on holdback funds.	7-21-81	240
Use and distribution of monies by Joint Finance and Appropriations Committee pursuant to Idaho Conservation League's "Quarters for Clean Air Program".	2-01-82	157

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Legislature has no authority to consider new policies of Water Resources Board before they become effective.	2-10-82	162
Regular appropriation authorization limits only transfers made for administration and operation expenses.	4-19-82	185
Right of Legislative Auditor to review workpapers in audit of state department of public institution and its political subdivisions.	8-30-82	191
Family member of state representative cannot be hired by Senate.	12-09-82	207
Effect of legislative decision not to fund reciprocal contractual agreements for fire protection services.	1-19-83	141
Effective date of concurrent resolution.	2-14-83	147
Interpretation of constitutional provision requiring that "bills for raising revenue" must originate in the House of Representatives.	2-24-83	160
Constitutionality of legislation limiting insurance coverage for elective abortions.	2-28-83	165
Constitutional limits to legislature's ability to act during special sessions.	5-12-83	203
Effect upon contract between attorney and Bureau of Child Support Services of election of attorney's spouse to legislature.	6-28-83	209
Senate may amend revenue raising measure originating in the House but may not attach revenue raising amendment to non-revenue bill.	2-15-84	114
Proposed bill barring cause of action for wrongful birth is not unconstitutionally broad or void for vagueness.	2-21-85	104
 LIBRARIES		
Establishment of new library districts under one-percent initiative and budget freeze.	5-07-79	196
Power of Library Board.	8-17-79	90

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
LIQUOR		
Proper I.D. for purchase of alcoholic beverage and liability of licensee.	3-12-79	193
Regular appropriation authorization limits only transfers made for administration and operation expenses.	4-19-82	185
Determination of cities' and counties' share of fiscal 1983 liquor revenues.	9-16-82	198
Beer and wine wholesalers may provide labor and assistance to retailers in designing and stocking shelves without violating federal law.	3-15-84	127
Whether exceptions to alcohol laws are broad enough to cover chaperoned graduation parties.	1-16-85	82
State Liquor Dispensary may remain liable for any remaining financial obligation of broken lease.	2-02-85	89
MILITARY		
Residency requirements for tuition purposes when one is separated from armed services.	1-25-82	154
Veterans preferences to disabled war veterans.	3-25-82	182
MOTOR VEHICLES		
Requirements and definition of Motor Vehicle Dealer.	5-31-79	205
Department of Law Enforcement has authority to transfer and issue new titles on lien-sold vehicles.	11-07-79	239
Use of motor vehicle registration fees to support Idaho State-wide Emergency Medical Services System.	12-11-80	254
Power of local governments to regulate motor vehicle emissions.	2-13-81	199
Definition of non-resident for purpose of issuing driver's license.	2-22-82	170
Computation of maximum gross weight on which user fees are imposed.	8-31-82	193

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
State police operations may be funded by motor vehicle registration fees and fuel taxes only to extent such operations relate directly to enforcement of highway safety and traffic laws.	2-03-84	109
Vehicle operating over its registered maximum gross weight.	3-05-84	125
Chauffeur status of commercial haulers.	10-03-85	140
 OPEN MEETING LAW		
Negotiation process for public school districts and their professional employees in relation to joint ratification of settlement in open meetings.	6-09-81	231
 PARKS AND RECREATION		
No bond requirement for an election to dissolve recreation district.	7-13-81	237
 PLANNING AND ZONING		
Land donations from subdividers.	2-02-79	182
City zoning and police powers.	10-23-79	233
Power of city to annex subdivision and require residents to hook up to city sewer system.	2-20-80	219
Authority of county commissioners to accept dedications in plats in areas outside cities.	2-25-81	203
Five year residency requirement to serve on local planning and zoning commission.	4-02-81	213
Mandatory allowance of development of geothermal resources.	4-06-81	215
City's acceptance of plant construction in lieu of development fees does not amount to expenditure necessitating competitive bids nor amount to loaning of credit.	4-24-81	219
Requirements of county commissioners under Local Planning Act.	5-21-81	230
Effect of Right to Farm Bill on existing zoning ordinances.	9-30-81	246
Recording of survey statutes is supplementary to existing laws relating to platting.	1-11-82	152

TOPIC	DATE	PAGE
Proposed restrictive covenant banning "group homes" from residential neighborhoods is most likely unconstitutional and unenforceable on public policy grounds.	1-22-85	85
PRIVATE LANDS		
Determination of amount of compensation condemnor of property for irrigation purposes required to pay.	2-09-81	196
Right of developer to severed mineral rights in relation to owner of surface rights of same property.	2-10-82	162
Bill prohibiting trespass by vehicles on private land devoted to agriculture constitutional.	3-02-82	177
PUBLIC EMPLOYEES		
County recorder's duty to insure valid acknowledgements. .	5-21-79	198
Retired firefighter's participation in Public Employee Retirement System.	12-18-80	256
Personnel reclassifications and salary adjustments at time of reclassification.	2-19-85	102
PUBLIC FUNDS		
Expending public funds to connect private residences to public sewer system is constitutional.	1-30-81	192
Selective release of holdback funds.	7-21-81	240
Propriety of using current year fund balances for expenditures or liabilities in excess of budget appropriations.	2-09-83	145
Power of city to expend public funds for purposes of advertising and promoting city.	3-14-83	177
PUBLIC LANDS		
Exploration prior to potential hard rock subsurface mining and not underground or lode mining is governed by Surface Mining Act.	1-20-81	191
Federal acquisition of land within states of the Union.	3-05-81	208
Taylor Grazing Act monies are distributed on basis of area in each county, not on basis of amount produced.	2-17-82	167
State duty of care with respect to fires on state-owned land.	1-19-83	141

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
State obligation to reimburse Bureau of Land Management if state fails to take responsible steps to prevent a fire on state owned land from spreading to BLM land.	1-19-83	141
Propriety of using current year fund balances for expenditure or liabilities in excess of budget appropriation.	2-09-83	145
Authority of state to pay cost of range fire suppression with monies from Forest Protection Fund.	4-08-83	197
Ownership interest of United States in range improvements constructed in part with funds received under Taylor Grazing Act.	6-03-83	205
State agency may not sell or exchange state-owned property acquired from federal government for less than its appraised value.	3-16-84	129
Board of Scaling Practices — Forest products removed in Idaho but scaled in another state are not subject to Idaho scaling laws.	4-11-84	147
Board of Land Commissioners — Board authorized to exchange land with private corporation for similar lands of equal value when in state's best interest.	6-26-84	159
 PUBLIC UTILITIES COMMISSION		
Legislature may overturn rate schedule handed down by I.P.U.C.	2-20-80	222
 PUBLIC WORKS		
Construction of breakwater by city.	5-24-79	200
Public Works Licensing Law as applied to prefabricated buildings.	7-19-79	210
Building codes can include energy conservation.	8-08-79	214
County construction of sewer in non-incorporated area. ...	8-15-79	216
Expending public funds to connect private residences to public sewer system constitutional.	1-30-81	192
Applicability of prevailing wage laws to construction of health facilities.	4-21-81	218
Applicability of UBC to state buildings.	4-24-81	221

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
REVENUE AND TAXATION		
Establishing new taxing districts under one-percent initiative and budget freeze statute.	5-07-79	196
Emergency expenditure levies and "one-percent" initiative.	5-31-79	203
One-percent initiative and deficit-financed cities.	8-09-79	211
Tax exempt status of Good Samaritan Village and other charitable organizations.	10-30-79	236
No taxation by state of federal activities or land.	12-19-79	251
City and local government power to charge user fees to mitigate reliance on ad valorem taxation.	1-22-80	201
Constitutionality of authorizing cities to impose non-property taxes.	2-06-80	211
Local option income taxes.	2-06-80	212
Constitutionality of special tax for funding public television.	2-08-82	159
Authority of county assessor to double assessments of personal property for failure to file personal property tax declarations.	4-13-83	199
Applicability of sales tax to materials purchased by grazing permittee for construction of United States-owned range improvements.	6-03-83	205
Use tax exemption for INEL contractors.	6-05-84	154
Bill permitting resort city residents and city governments to act in concert to impose sales taxes constitutional.	2-11-85	96
SELF-REGULATING AGENCIES		
National Conference examinations as applied by Board of Morticians.	2-26-82	176
STATE BUILDINGS		
Main responsibilities of Permanent Building Fund Advisory Council.	3-07-80	236
WATER RESOURCES		
Dissolved oxygen water quality standards.	1-22-80	198

TEN-YEAR GUIDELINES INDEX 1975-1985

TOPIC	DATE	PAGE
Authority of Water Resource Board to finance hydropower projects through sale of revenue bonds.	8-10-81	242
Compliance with management practices under Forest Practices Act and compliance with water quality standards. ...	12-30-81	255
Legislature has no authority to consider new policies of Water Resources Board before they become effective.	2-10-82	162
Constitutionality of legislation authorizing exercise of state police powers to subordinate existing water rights for power generation to public interest.	3-16-83	182
Vesting of water rights for purposes of determining when a "taking" has occurred.	3-16-83	182
Protection of witness from prosecution for libel for statements made before Department of Water Resources.	3-18-83	190
State owns beds of waterways navigable at time of statehood unless Congress had conveyed rights to another entity prior to such time.	11-06-84	168

**INFORMAL GUIDELINES
1975 – 1985
UNITED STATES CONSTITUTION CITATIONS**

ARTICLE & SECTION	DATE	PAGE
ARTICLE 1		
§ 8, Cl. 3	3-19-84	..... 132
§ 10	5-25-84	..... 151
ARTICLE VI		
Cl. 2	3-19-84	..... 132

**INFORMAL GUIDELINES
1975 – 1985
IDAHO CONSTITUTION CITATIONS**

ARTICLE & SECTION	DATE	PAGE
ARTICLE I		
§ 1	2-10-82	162
§ 2	2-4-85	91
§ 4	10-31-83	238
§ 7	3-8-82	178
§ 13	4-26-85	116
§ 14	2-9-81	196
§ 14	3-16-83	182
§ 16	2-28-83	165
§ 16	5-25-84	151
ARTICLE II		
§ 1	7-21-81	240
§ 1	3-10-83	168
§ 1	7-17-85	130
§ 2	2-9-81	196
§ 3	2-9-81	196
ARTICLE III		
§ 1	12-5-80	251
§ 2	12-4-80	267
§ 3	12-4-80	267
§ 6	7-8-81	235
§ 8	12-5-80	251
§ 8	12-5-80	252
§ 9	12-4-80	265
§ 9	2-14-83	147
§ 11	12-4-80	264
§ 14	2-24-83	160
§ 14	2-15-84	114
§ 16	2-22-83	157
§ 19	3-13-81	210
§ 19	6-5-84	154
§ 20	8-15-84	165
§ 20	2-26-85	107
§ 21	2-14-83	147
§ 22	5-25-84	151
§ 23	2-14-83	147
§ 23	1-17-84	107
ARTICLE IV		
§ 9	5-13-80	243
§ 9	5-13-80	244

TEN-YEAR GUIDELINES 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	DATE	PAGE
§ 9	5-13-80	245
§ 9	5-13-80	246
§ 9	12-5-80	252
§ 9	12-5-80	253
§ 9	7-10-81	236
§ 9	7-17-81	239
§ 9	5-12-83	203
§ 10	2-14-83	147
§ 10	2-22-83	157
§ 11	2-22-83	157
§ 19	1-17-84	107
 ARTICLE V		
§ 13	2-9-81	196
§ 18	3-10-83	168
§ 23	7-8-81	235
 ARTICLE VI		
§ 2	12-4-80	268
§ 3	12-4-80	268
 ARTICLE VII		
§ 5	2-8-82	159
§ 6	2-6-80	211
§ 6	2-6-80	212
§ 6	2-6-80	213
§ 13	7-21-81	240
§ 13	4-4-83	192
§ 14	4-4-83	192
§ 17	12-11-80	254
§ 17	12-11-80	255
§ 17	2-8-82	159
§ 17	2-3-84	109
 ARTICLE VIII		
§ 1	4-4-83	192
§ 2	1-30-81	192
§ 2	8-7-84	161
§ 3	4-4-83	192
§ 3	3-27-84	141
§ 3	8-7-84	161
§ 4	1-30-81	192
§ 4	4-24-81	219
§ 4	3-14-83	177
§ 4	8-7-84	161
 ARTICLE IX		
§ 1	3-13-81	210

TEN-YEAR GUIDELINES 1975-1985 IDAHO CONSTITUTION CITATIONS

ARTICLE & SECTION	DATE	PAGE
§ 3	1-10-85	77
§ 4	1-10-85	77
§ 5	12-11-81	252
§ 6	3-4-81	206
§ 7	3-16-84	129
§ 8	10-20-82	201
§ 8	10-28-82	203
§ 8	3-16-84	129
§ 8	3-19-84	132
§ 8	6-26-84	159
§ 8	1-10-85	77
§ 10	2-4-80	205
§ 10	4-24-81	221
§ 17	10-28-82	203
 ARTICLE XI		
§ 2	2-1-80	204
§ 3	2-1-80	204
§ 8	3-16-83	182
§ 18	3-19-84	132
 ARTICLE XII		
§ 1	2-1-80	204
§ 1	5-1-81	226
§ 1	3-14-83	177
§ 2	1-22-80	202
§ 2	2-15-80	217
§ 2	2-20-80	217
§ 2	2-13-81	199
§ 2	5-1-81	226
§ 2	3-14-83	177
§ 2	11-30-84	181
§ 2	2-4-85	91
§ 2	4-26-85	116
§ 4	1-30-81	192
§ 4	3-14-83	177
§ 4	8-7-84	161
 ARTICLE XV		
§ 3	3-16-83	182
§ 7	2-10-82	162
 ARTICLE XVIII		
§ 6	7-6-83	212
 ARTICLE XX		
§ 3	3-10-80	230
 ARTICLE XXI		
§ 2	2-1-80	204

**INFORMAL GUIDELINES
1975 – 1985
IDAHO CODE CITATIONS**

CODE	DATE	PAGE
1-2007	7-8-81	..... 235
6-801 et. seq	2-21-85	..... 104
6-901 et. seq	1-19-83	..... 141
6-1201	9-19-83	..... 226
8-509	12-19-85	..... 147
8-509(b)	12-19-85	..... 147
9-203(A)	8-30-82	..... 191
9-203(2)	8-30-82	..... 191
9-301	8-30-82	..... 191
9-301	12-3-84	..... 183
11-103(b)	12-19-85	..... 147
Title 13, Chapter 50	1-11-82	..... 152
16-803	1-17-80	..... 195
16-803	1-17-80	..... 197
18-111	3-8-82	..... 178
18-111	3-4-85	..... 110
18-113	3-8-82	..... 178
18-401	1-22-82	..... 153
18-402	1-22-82	..... 153
18-403	1-22-82	..... 153
18-404	1-22-82	..... 153
18-405	1-22-82	..... 153
18-604	8-2-83	..... 218
18-608	8-2-83	..... 218
18-608(2)	8-2-83	..... 218
18-609	8-2-83	..... 218
18-609(2)	8-2-83	..... 218
18-609(3)	8-2-83	..... 218
18-609(4)	8-2-83	..... 218
18-609(6)	8-2-83	..... 218
18-609(7)	8-2-83	..... 218
18-609(2)(a)(c)	8-2-83	..... 218
18-609(b)	8-2-83	..... 218
18-801 et. seq	8-29-85	..... 137
18-1502(e)	1-16-85	..... 82
18-2101	4-5-84	..... 146
18-2113	4-5-84	..... 146
18-2304	12-4-80	..... 258
18-2306	12-4-80	..... 258
18-3302	8-29-85	..... 139
Title 18, Chapter 38	2-26-85	..... 107
18-4004	7-8-80	..... 248
18-4901	8-15-84	..... 165

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
18-7701	3-19-84	..... 132
18-8001	3-21-84	..... 136
18-8002	6-3-85	..... 127
18-8002(2)	6-3-85	..... 127
18-8002(6)	6-3-85	..... 127
18-8004	6-3-85	..... 127
19-310	8-29-85	..... 137
19-601	8-29-85	..... 137
19-603	8-29-85	..... 137
19-1114	3-10-83	..... 168
19-1115	3-10-83	..... 168
19-1902	3-8-82	..... 178
19-2514	9-20-83	..... 235
19-2601	11-1-83	..... 241
19-2703	11-1-83	..... 241
19-2705	7-8-80	..... 247
19-2705	7-8-80	..... 248
19-2802	7-8-80	..... 248
19-3901	3-8-82	..... 178
19-4219	11-1-83	..... 241
19-4705(c)	3-21-84	..... 136
19-5101(c)	8-29-85	..... 137
Title 19, Chapter 55	1-11-82	..... 152
20-219	11-1-83	..... 241
20-222	11-1-83	..... 241
20-223	7-6-83	..... 212
20-225	5-25-84	..... 151
20-227	11-1-83	..... 241
20-228	11-1-83	..... 241
20-413	10-21-85	..... 144
20-414	10-21-85	..... 144
20-605	3-21-84	..... 136
22-2918	3-14-83	..... 177
22-2918	7-17-85	..... 130
Title 22, Chapter 41	2-19-82	..... 168
22-4104	2-19-82	..... 168
22-4106	2-19-82	..... 168
22-4501	9-30-81	..... 246
22-4501	2-22-82	..... 170
22-4503	9-30-81	..... 246
22-4503	2-22-82	..... 170
22-4504	9-30-81	..... 246
22-4504	2-22-82	..... 170
23-201	3-10-80	..... 229
23-404	4-19-82	..... 185
23-404(a)	4-19-82	..... 185
23-404(1)(c)(d)	9-16-82	..... 198
23-404(1)(b)(5)	9-16-82	..... 198

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
23-405	9-16-82	198
23-603	1-16-85	82
Title 23, Chapter 9	1-16-85	82
23-929	1-16-85	82
23-949	1-16-85	82
Title 23, Chapter 10	1-16-85	82
23-1003	3-15-84	127
23-1013	1-16-85	82
23-1023	1-16-85	82
Title 23, Chapter 13	1-16-85	82
23-1334(a)(b)(d)	1-16-85	82
24-2102	12-4-80	258
25-613A	8-22-83	222
25-2119	2-21-85	104
25-2401 et. seq	4-26-85	116
25-2402	7-17-85	130
31-606	2-9-83	145
31-801	2-25-81	203
31-801	3-27-84	141
31-802	2-25-81	203
31-802	7-6-83	212
31-803	2-25-81	203
31-804	2-25-81	203
31-808	3-27-84	141
31-813	7-6-83	212
31-828	7-6-83	212
31-836	2-6-80	214
31-836	2-6-80	215
31-862	2-5-81	195
31-867	2-9-83	145
31-870	4-26-85	116
31-1001	3-27-84	141
31-1502	2-9-83	145
31-1509, et. seq	2-9-83	145
31-1601 through 1605	2-9-83	145
31-1605	2-9-83	145
31-1606	2-9-83	145
31-1606	7-6-83	212
31-1607	2-9-83	145
31-1608	2-9-83	145
31-2009	7-6-83	212
31-2017	2-9-83	145
31-2202(2)	3-4-85	110
31-2602	7-6-83	212
31-2603	3-10-83	168
31-2604	3-10-83	168
31-2604(2)	3-10-83	168
31-2607	7-6-83	212

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
31-3113	7-6-83	212
31-3302(7)	7-18-80	249
31-3515	2-6-80	215
31-3515	2-6-80	216
31-3575	2-6-80	215
31-4001	3-27-84	141
31-4003	3-27-84	141
31-4304	7-13-81	237
31-4304(a)	7-13-81	237
31-4304(b)	7-13-81	237
31-4304(c)	7-13-81	237
31-4304(d)	7-13-81	237
31-4320	7-13-81	237
31-4320(a)	7-13-81	237
31-4320(b)	7-13-81	237
31-4320(c)	7-13-81	237
32-101	6-3-85	127
32-301	10-31-83	238
32-302	10-31-83	238
32-303	10-31-83	238
32-304	10-31-83	238
32-305	10-31-83	238
32-306	10-31-83	238
32-307	10-31-83	238
32-308	10-31-83	238
32-309	10-31-83	238
32-401	10-31-83	238
32-906	6-28-83	209
33-101	4-24-81	221
33-107	4-24-81	221
33-116	4-24-81	221
33-122	4-24-81	221
33-205	3-13-81	210
33-308	12-6-83	244
33-310	12-6-83	244
33-311	12-6-83	244
33-305	3-19-84	132
Title 33, Chapter 5	2-15-84	114
33-506	8-26-81	244
33-511	3-25-85	113
33-512	8-26-81	244
33-516	3-13-81	210
33-801A	3-26-84	139
33-802	2-1-80	204
33-802	3-26-84	137
33-802(3)	3-26-84	139
33-804	3-26-84	139
33-901	3-26-84	139

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
33-1216	3-13-81	210
33-1271	6-9-81	231
Title 33, Chapter 13	2-15-84	114
33-1402	3-13-81	210
33-1403	3-13-81	210
33-1406	3-13-81	210
33-1501	12-11-81	252
33-2104	7-17-85	130
33-2110(A)	9-16-82	198
33-2202	4-24-81	221
33-2209	4-24-81	221
33-2307	5-1-84	148
33-2308	5-1-84	148
33-2601	2-14-84	111
33-2602	2-14-84	111
33-2603	2-14-84	111
33-2604	2-14-84	111
33-2712	2-14-84	111
33-2715	2-14-84	111
33-3301	4-24-81	221
33-3717	2-4-80	205
33-3717	1-25-82	154
33-3717(2)(g)	1-25-82	154
33-3720	6-19-84	156
33-3720(2)	6-19-84	156
34-101	12-4-80	269
34-107	12-4-80	268
34-304	12-4-80	268
34-402	12-4-80	267
34-402	7-8-81	235
34-403	12-4-80	267
34-614	7-8-81	235
34-614	7-10-81	236
Title 34, Chapter 7	2-26-85	109
34-705	2-26-85	109
34-706	2-26-85	109
34-715	2-26-85	109
34-1104	12-4-80	268
34-1111	12-4-80	268
34-1803	7-17-81	239
34-2021	12-4-80	266
34-2101	12-4-80	265
34-2101	12-4-80	267
34-2101(8)	12-4-80	269
34-2105	12-4-80	261
34-2114	12-4-80	259
34-2117	12-4-80	259
34-2117	12-4-80	260

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
34-2118	12-4-80	..... 260
34-2118	12-4-80	..... 264
34-2301	12-4-80	..... 269
34-2303	12-4-80	..... 268
36-101	8-7-84	..... 161
36-103(b)	8-7-84	..... 161
36-104(b)(5)	8-15-84	..... 165
36-104(b)(9)	2-22-84	..... 115
36-104(b)(9)	8-7-84	..... 161
36-106(e)	8-7-84	..... 161
36-107(a)	8-7-84	..... 161
36-202(r)(l)	9-18-85	..... 139
36-406	8-15-84	..... 165
36-407	8-15-84	..... 165
36-1102	2-22-84	..... 115
36-2102	9-19-83	..... 226
36-2102(b)	9-19-83	..... 226
36-2102(c)	9-19-83	..... 226
37-715	5-21-81	..... 230
37-1620(l)	1-5-82	..... 151
37-1520(k)	1-5-82	..... 151
37-1523A	1-5-82	..... 151
38-101(b)	4-6-83	..... 195
38-101(b)	4-8-83	..... 197
38-102	4-8-83	..... 195
38-104(a)	4-6-83	..... 195
38-104(a)(b)	4-6-83	..... 195
38-104(c)	4-6-83	..... 195
38-104	4-8-83	..... 197
38-104(a)	4-8-83	..... 197
38-105	4-6-83	..... 195
38-107	4-8-83	..... 197
38-110	4-6-83	..... 195
38-110	4-8-83	..... 197
38-111	6-2-82	..... 186
38-111	4-6-83	..... 195
38-111	4-8-83	..... 197
38-114	4-6-83	..... 195
38-114	4-8-83	..... 197
38-129	4-6-83	..... 195
38-129	4-8-83	..... 197
38-131	4-6-83	..... 195
38-1202(c)	4-11-84	..... 147
39-101	2-13-81	..... 199
39-101 et. seq	3-1-84	..... 121
39-105(3)	5-1-81	..... 226
39-105(3)	3-1-84	..... 121
39-105(3)(K)	5-1-81	..... 226

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
39-105(3)(L)	2-13-81	..... 199
39-108	3-1-84	..... 121
39-118	5-1-81	..... 226
39-256	10-6-81	..... 248
39-262	10-31-83	..... 238
39-263	10-31-83	..... 238
39-264	10-31-83	..... 238
39-265	10-31-83	..... 238
39-266	10-31-83	..... 238
39-267	10-31-83	..... 238
39-273(b)(2)	10-31-83	..... 238
39-301	7-21-83	..... 215
39-401	5-1-81	..... 226
39-401	4-24-81	..... 221
39-414	4-12-85	..... 114
39-414(1)	5-1-81	..... 226
39-414(2)	5-1-81	..... 226
39-416	5-1-81	..... 226
39-416	4-12-85	..... 114
39-425	2-5-81	..... 195
39-1318	2-6-80	..... 216
39-1441	4-21-81	..... 218
39-1442	4-21-81	..... 218
39-1459	4-21-81	..... 218
Title 39, Chapter 37	6-3-85	..... 127
39-3701	6-3-85	..... 127
Title 39, Chapter 38	6-3-85	..... 127
39-4105(4)	4-24-81	..... 221
39-4109	4-24-81	..... 221
39-4111	4-24-81	..... 221
39-4116	5-1-81	..... 226
39-4303	6-3-85	..... 127
39-4601 et. seq	1-22-85	..... 85
39-4604(h)	1-22-85	..... 85
39-4701 et. seq	1-22-85	..... 85
39-A4701 et. seq	1-22-85	..... 85
39-6001 et. seq	11-14-85	..... 145
39-6007 (4)	11-14-85	..... 145
39-6008	11-14-85	..... 145
40-109(b)	2-25-81	..... 203
40-120(19)	2-22-84	..... 115
40-405	2-25-81	..... 203
40-1102A(2)	9-20-83	..... 235
40-1503A	2-22-84	..... 115
40-1601	2-25-81	..... 203
40-1605	2-25-81	..... 203
40-1611	2-25-81	..... 203
40-1611	2-22-84	..... 115

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
40-1613	2-25-81	203
40-1614	2-22-84	115
40-1621	2-25-81	203
40-1628	2-25-81	203
40-1634	2-25-81	203
40-1641	2-25-81	203
40-1646	2-25-81	203
40-1665	2-25-81	203
41-255	8-29-85	137
41-257	8-29-85	137
41-253 et. seq	8-29-85	137
41-254	8-29-85	137
42-103	3-16-83	182
42-203	3-16-83	190
42-222	3-18-83	190
42-405	3-16-83	182
42-1106	2-9-81	196
42-1734	2-10-82	162
42-1734(h)	8-10-81	242
42-1734(m)	8-10-81	242
42-1734(S)	8-10-81	242
42-1734(x)	8-10-81	242
42-1736	2-10-82	162
42-1736A	3-16-83	182
42-1740	8-10-81	242
42-1756(c)(7)	8-10-81	242
42-3213	1-22-80	201
42-3213	1-22-80	202
42-3217	1-22-80	201
44-104	4-24-81	221
44-107	10-30-84	167
44-1001	4-21-81	221
44-2006	2-19-82	168
47-111	3-10-80	229
47-1501	1-20-81	191
47-1503(5)	1-20-81	191
47-1503(6)	1-20-81	191
47-1503(7)	1-20-81	191
Title 49	3-8-82	178
49-101(a)	8-31-82	193
49-101(b)	8-31-82	193
49-101(f)	8-31-82	193
49-101(f)	3-5-84	125
49-101(g)(h)	8-31-82	193
49-127	3-5-84	125
49-127(d)(l)	8-31-82	170
49-127(d)(7)	8-31-82	193
49-132	3-5-84	125

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
Title 49, Chapter 3	10-3-85	..... 140
49-301	10-3-85	..... 140
49-301(2)	10-3-85	..... 140
49-303	10-3-85	..... 140
49-303(c)	10-3-85	..... 140
49-304	2-22-82	..... 170
49-307	2-22-82	..... 170
49-308	2-22-82	..... 170
49-308(3)	2-22-82	..... 170
49-309	2-22-82	..... 170
49-347	10-3-85	..... 140
49-581	2-13-81	..... 199
49-582	2-13-81	..... 199
49-594	3-4-85	..... 110
49-698	3-4-85	..... 110
49-698(1)	3-4-85	..... 110
49-698(2)	3-4-85	..... 110
49-698(5)	3-4-85	..... 110
49-763	2-21-85	..... 104
49-835(b)	2-13-81	..... 199
49-901	3-5-84	..... 125
49-901A	3-5-84	..... 125
49-1102	7-21-83	..... 215
49-1102	9-20-83	..... 235
49-1102(b)	9-20-83	..... 235
29-1102(e)	9-20-83	..... 235
49-1102A	7-21-83	..... 215
49-1102A	9-20-83	..... 235
49-1102A(3)	9-20-83	..... 235
49-1102A(4)	7-21-83	..... 215
49-1102A(5)(a)	7-21-83	..... 215
49-1102B	9-20-83	..... 235
49-1301	2-3-84	..... 109
49-1401	2-21-85	..... 104
49-1611	2-25-81	..... 203
Title 49, Chapter 32	4-26-85	..... 116
49-3201 et. seq	4-26-85	..... 116
49-3229	4-26-85	..... 116
49-3402	3-4-85	..... 110
49-3402(2)	3-4-85	..... 110
49-3406	3-4-85	..... 110
49-3406(1)	3-4-85	..... 110
49-3406(2)	3-4-85	..... 110
49-3410	3-21-84	..... 136
50-101	7-17-85	..... 130
50-209	3-4-85	..... 110
50-222	2-20-80	..... 219
50-301	2-13-81	..... 199

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
50-301	3-14-83	177
50-302	2-13-81	199
50-302	3-14-83	177
50-302A	3-21-84	136
50-304	4-24-81	219
50-307	1-22-80	202
50-334	4-24-81	219
50-341(b)	4-24-81	219
50-1043 et. seq	2-11-85	96
50-1302	1-11-82	152
50-1303	2-25-81	203
50-1312	2-25-81	203
50-1313	2-25-81	203
50-1314	1-11-82	152
50-1316	1-11-82	152
50-1326	5-1-81	226
50-1329	1-11-82	152
50-1706	7-17-85	130
50-3401(1)	4-24-81	219
51-104(a)	6-26-81	158
54-1108	2-26-82	176
54-1800	10-6-81	248
54-1803	10-6-81	248
54-1804	10-6-81	248
54-1911	9-13-82	195
54-2502	4-2-82	184
54-2507	7-7-82	188
54-2507	9-3-82	194
54-2510	4-2-82	184
54-2513	7-7-82	188
54-2513(2)	4-2-82	184
55-101	3-16-83	182
55-1901	1-11-82	152
56-201	2-29-84	119
56-202	7-18-80	250
56-202	2-29-84	119
56-203	2-29-84	119
56-233	7-18-80	249
56-233	7-18-80	250
56-2096	2-29-84	119
57-718	3-10-80	229
57-727	3-10-80	233
57-803	2-1-82	157
57-803(a)	2-1-82	157
57-803(h)(i)	12-10-82	209
57-807	12-10-82	209
57-808	12-10-82	209
57-1105	3-7-80	239

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
57-1105A	3-7-80	..... 238
57-1105A	3-7-80	..... 241
57-1106	3-7-80	..... 239
57-1108	3-7-80	..... 238
57-1108	3-7-80	..... 239
57-1201	2-17-82	..... 167
57-1201	6-3-83	..... 205
57-1202	6-3-83	..... 205
57-1203	6-3-83	..... 205
58-138	6-26-84	..... 159
58-140	11-6-84	..... 168
58-140	1-10-85	..... 77
58-301	1-10-85	..... 77
58-313	10-28-82	..... 203
58-314	10-28-82	..... 203
58-315	10-28-82	..... 203
58-332	3-16-84	..... 129
58-411	10-28-82	..... 203
58-416	1-10-85	..... 77
58-702(1)	3-5-81	..... 208
58-702(2)	3-5-81	..... 208
58-1104	1-10-85	..... 77
59-201	2-25-81	..... 201
59-501	12-4-80	..... 265
59-513	2-6-80	..... 209
59-701	12-9-82	..... 207
59-904	3-10-80	..... 229
59-1009	12-3-84	..... 183
59-1011	12-3-84	..... 183
59-1012	8-7-84	..... 161
59-1015	4-4-83	..... 192
59-1016	4-4-83	..... 192
59-1017	4-4-83	..... 192
59-1115	3-19-84	..... 132
59-1302(28)	12-18-80	..... 257
59-1316(2)	12-18-80	..... 257
59-1326	3-10-80	..... 229
59-1327	3-10-80	..... 231
59-1352	12-18-80	..... 257
61-305	2-20-80	..... 226
61-307(supra)	2-20-80	..... 226
61-502(supra)	2-20-80	..... 226
61-622(supra)	2-20-80	..... 226
61-623(supra)	2-20-80	..... 226
Title 61, Chapter 8	10-3-85	..... 140
61-801(f)(g)(h)	10-3-85	..... 140
63-112	3-2-82	..... 177
63-203	4-13-83	..... 199

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
63-207	4-13-83	..... 199
63-923	2-5-81	..... 195
63-2202	4-13-83	..... 199
63-2212	4-13-83	..... 199
63-2213	4-13-83	..... 199
63-2220	2-5-81	..... 195
63-2220	3-26-84	..... 139
63-3615(b)	6-5-84	..... 154
63-3638(d)	3-19-84	..... 132
65-5773	2-27-84	..... 117
66-348	2-27-84	..... 117
66-3029A	2-15-84	..... 114
67-302	12-5-80	..... 253
Title 67, Chapter 4	7-7-82	..... 188
67-402	12-5-80	..... 253
67-403	12-4-80	..... 258
67-404	12-5-80	..... 252
67-404	12-5-80	..... 253
67-404A	12-5-80	..... 252
67-404A	12-5-80	..... 253
67-406(b)	1-17-84	..... 107
67-407	12-4-80	..... 261
67-445	7-7-82	..... 188
67-446	7-7-82	..... 188
67-449	8-30-82	..... 191
67-449(4)	7-7-82	..... 188
67-449(8)	8-30-82	..... 191
67-450	7-7-82	..... 188
67-503	3-25-82	..... 182
67-510	6-2-82	..... 186
67-510	8-30-82	..... 191
67-510	5-25-84	..... 151
67-511	3-25-82	..... 182
67-511	8-22-83	..... 222
67-802	3-10-80	..... 227
67-802	3-10-80	..... 229
67-802	3-10-80	..... 230
67-802	3-10-80	..... 231
67-802	3-10-80	..... 234
67-802	3-10-80	..... 235
67-802	3-10-80	..... 236
67-809	1-17-84	..... 107
67-901	2-14-83	..... 147
67-902	2-14-83	..... 147
67-904	2-14-83	..... 147
67-1205	2-1-82	..... 157
67-1209	2-1-82	..... 157
67-1210	12-10-82	..... 209

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
67-1210	11-14-85	..... 145
67-2304	4-24-81	..... 221
67-2312	4-24-81	..... 221
67-2313	4-24-81	..... 221
67-2322	2-6-80	..... 215
67-2322	2-6-80	..... 216
67-2323	2-6-80	..... 215
67-2324	2-6-80	..... 215
67-2326	2-6-80	..... 216
67-2326 through 67-2333	4-24-81	..... 221
67-2326 through 67-2333	3-1-82	..... 175
67-2340	6-9-81	..... 231
67-2402	3-10-80	..... 232
67-3507	3-7-80	..... 236
67-3512	7-21-81	..... 240
67-3512	2-22-83	..... 157
67-3516	11-14-85	..... 145
67-3524	12-10-82	..... 209
67-3710	3-7-80	..... 238
67-4066	2-14-83	..... 147
67-4702	3-10-80	..... 230
67-4703	3-14-83	..... 177
67-4703	7-17-85	..... 130
Title 67, Chapter 49	7-17-85	..... 130
67-4901	7-17-85	..... 130
67-4902	7-17-85	..... 130
67-4904	7-17-85	..... 130
67-4912	7-17-85	..... 130
67-4912(m)	3-14-83	..... 177
67-4912(m)	7-17-85	..... 130
67-4912(o)	7-17-85	..... 130
67-4917A et. seq	2-11-85	..... 96
67-4916	7-17-85	..... 130
67-4919	7-17-85	..... 130
67-4930	7-17-85	..... 130
67-5101	12-10-81	..... 251
67-5102	12-10-81	..... 251
Title 67, Chapter 52	9-22-82	..... 200
67-5201	1-22-80	..... 199
67-5201	12-30-81	..... 251
67-5201	2-29-84	..... 119
67-5201(7)	9-22-82	..... 200
67-5708	4-24-81	..... 221
67-5217	1-22-80	..... 199
67-5217	1-22-80	..... 200
67-5218	1-22-80	..... 199
67-5218	1-22-80	..... 200
67-5218	2-29-84	..... 119

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
67-5218	6-19-84	156
Title 67, Chapter 53	3-25-82	182
67-5303	3-10-80	235
67-5309	3-25-82	182
67-5309A(1)	2-19-85	102
67-5312	3-25-82	182
67-5403	3-10-80	228
67-5405	3-10-80	233
67-5605	5-24-85	120
67-5710	3-7-80	237
67-5710	3-7-80	238
67-5710	3-7-80	240
67-5710	3-7-80	241
67-5710	3-7-80	242
67-5711	3-7-80	237
67-5711	3-7-80	238
67-5711	3-7-80	239
67-5711	3-7-80	240
67-5711	3-7-80	241
67-5711	3-7-80	242
67-5711	3-7-80	243
67-5711	4-24-81	221
67-5711 through 67-5713	4-24-81	221
67-5712	3-7-80	236
67-5712	3-7-80	240
67-5712	3-7-80	241
67-5716(5)	6-28-83	209
67-5718	2-6-80	209
67-5718	3-7-80	239
67-5718	6-28-83	209
67-5726(1)	6-28-83	209
67-5903	3-10-80	229
67-5905	3-10-80	231
67-6410 through 67-6412	4-24-81	221
67-6423	4-24-81	221
67-6424	4-24-81	221
Title 67, Chapter 65	2-4-85	91
67-6503	11-30-84	181
67-6504	4-2-81	213
67-6504(a)	4-2-81	213
67-6508	4-6-81	215
67-6508(d)	5-21-81	230
67-6509	5-21-81	230
67-6511	5-21-81	230
67-6515	4-6-81	215
67-6515(a)	4-6-81	215
67-6518	5-21-81	230
67-6519	5-21-81	230

TEN-YEAR GUIDELINES 1975-1985 IDAHO CODE CITATIONS

CODE	DATE	PAGE
67-6526	11-30-84	..... 181
67-6528	4-24-81	..... 221
67-6530 et. seq	1-22-85	..... 85
67-6576(d)	11-30-84	..... 181
68-808	3-10-80	..... 228
72-201	2-21-85	..... 104
72-319	4-14-81	..... 216
72-319(4)	4-14-81	..... 216
72-902	3-10-80	..... 229
72-1302	2-24-83	..... 160
72-1302	4-4-83	..... 192
72-1333	4-4-83	..... 192
72-1346A	2-24-83	..... 160
72-1346	2-24-83	..... 160
72-1346	4-4-83	..... 192
73-101	8-22-83	..... 222