



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES  
ATTORNEY GENERAL

TELEPHONE  
(208) 334-2400

Attorney General No. 85-7

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

STATEHOUSE MAIL

Per Request for Attorney General 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

Mr. Gary H. Gould  
Director, Department of  
Labor and Industrial Services  
Page 2

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

Mr. Gary H. Gould  
Director, Department of  
Labor and Industrial Services  
Page 3

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

Mr. Gary H. Gould  
Director, Department of  
Labor and Industrial Services  
Page 4

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.

Mr. Gary H. Gould  
Director, Department of  
Labor and Industrial Services  
Page 5

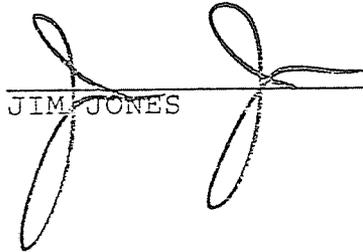
AUTHORITIES CONSIDERED:

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 § 67-5314  
Idaho Code § 67-3516  
Idaho Code § 67-3530

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

DATED this 31<sup>st</sup> day of Dec., 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