



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

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

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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

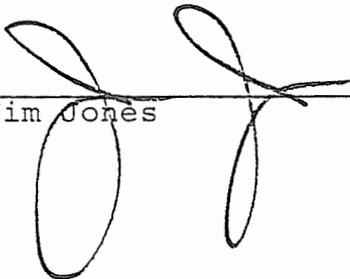
and collect a property tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act where the political subdivision has failed to purchase insurance or otherwise provide a comprehensive liability plan to cover a risk created under the 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 that 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.

JJM/kjb