



STATE OF IDAHO

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February 2, 1985

The Honorable Mike Strasser  
House of Representatives  
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL'S 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.

Very truly yours,

PATRICK J. KOLE  
Chief, Legislative and  
Public Affairs Division