



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

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 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 As you correctly noted in your letter, these rules and regulations must be adopted, amended or rescinded in a manner conforming to the provisions of the APA.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