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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

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 of 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 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.

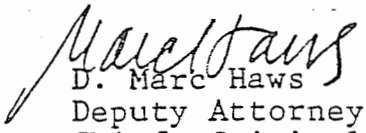
An analogous provision of Idaho Code § 18-8002(2) is also worth noting: The statute does not even permit a person suspected of driving while under the influence of alcohol to consult with his attorney before deciding whether or not to submit to an evidentiary test. The significance of limiting the motorist's 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

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