



STATE OF IDAHO

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ATTORNEY GENERAL OPINION NO. 86-4

TO: John Rooney
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STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

(A) Does H 708 extend from 1 o'clock a.m. to 2 o'clock a.m. the ability of a county to permit by ordinance sales of both liquor by the drink and beer or wine?

(B) Does H 708 grant a grace period from 2 o'clock a.m. to 2:30 o'clock a.m. for the consumption of both liquor by the drink and beer or wine?

CONCLUSION:

(A) No. H 708 does not grant to a county the ability to extend by ordinance beer and wine sales from 1 o'clock to 2 o'clock a.m.

(B) No. H 708 similarly does not grant a grace period from 2 o'clock a.m. to 2:30 o'clock a.m. for the consumption of either liquor by the drink or beer and wine.

ANALYSIS:

H 708 amends chapter 9 of title 23 Idaho Code. In general, title 23 deals with most aspects of state regulation of alcoholic beverages. Specifically, chapter 9 regulates the sale of liquor by the drink while chapters 10 and 13 regulate the sale of beer and wine, respectively. The various chapters of title 23 have been added over the years in response to changed conditions perceived to exist by different Idaho Legislatures. Additionally, various sections of these chapters have been amended from time to time. This has resulted in an ambiguous and apparently contradictory series of laws that require a historical review for a proper interpretation of H 708.

Chapters 1 through 8 of title 23, enacted by the 1939 legislature and known as the Idaho Liquor Act, created the state liquor dispensary system and replaced a bonded warehouse system. Not until 1947, with the enactment of chapter 9, was the retail sale of liquor by the drink from liquor purchased from the state liquor system permitted. See Idaho Code § 23-901. State regulation of beer, the sale of which was permitted in 1933, was rewritten and incorporated in chapter 10 of title 23. Chapter 13, known as the County Option Kitchen and Table Wine Act, was added to title 23 in 1973. Due to the way the code has been amended and reenacted over the years, the Idaho Supreme Court has acknowledged that ambiguities exist in the code provisions regarding alcohol. See State v. Bush, 93 Idaho 538, 466 P.2d 478 (1970). Nevertheless, the plain and literal wording of a statute must be our starting point in providing guidance in interpreting H 708. Local 1494 of International Association of Firefighters v. City of Coeur d'Alene, Idaho, 630, 639, 586 P.2d 1346 (1978). Further, absent ambiguity, the plain meaning of a statute must be given effect. Intermountain Health Care Inc. v. Board of County Commissioners of Madison County, 710 P.2d 595, 109 Idaho 685 (1985).

We begin our analysis by reviewing the bill itself. H 708 is entitled:

[A]n act relating to the days and hours of the sale of liquor by the drink; amending § 23-927, Idaho Code, to provide a county option for extending the hours of sale and permitting Sunday sale of liquor by the drink. (emphasis added)

On its face, H 708 appears to be clear and unambiguous. However, when placed in context with title 23, some confusion is apparent. As noted above, H 708 permits, on a county option basis, Sunday sales and extends from 1 o'clock a.m. to 2 o'clock a.m., the sale of liquor by the drink. Idaho Code § 23-902(g) defines liquor as "all kinds of liquor sold by and in a state liquor store." Because fortified and table wines have been sold in state liquor stores since 1937, and beer has been sold in state liquor stores since the early 1970's, it is possible to read H 708 as extending beer and wine sales from 1 o'clock a.m. to 2 o'clock a.m. This argument is supported by the apparent intent of the 48th Idaho Legislature to accomplish this result. See House State Affairs Committee Minutes of March 20, 1986. However, for the reasons stated below, we are unable to conclude that H 708 accomplished this result.

As noted above, H 708, by its very terms, deals only with "liquor by the drink." While "liquor" is broadly defined in Idaho Code § 23-902(g), Idaho Code § 23-105 further defines "alcoholic liquor," "spirits" and "wine" for purposes of the state liquor dispensary system. Further, as "beer" is defined in Idaho Code § 23-1001(a) and "wine" is defined in Idaho Code § 23-1303(a), it is our conclusion when reading the statutes together that the "liquor" referred to in Idaho Code § 23-902(g) relates only to liquor that must be purchased in a state liquor store, and cannot be read to include beer and wine which may be purchased in a state liquor store.

This interpretation is further supported by the entire format of title 23 which sets specific and at times different regulatory requirements for the sale of liquor, liquor by the drink, beer and wine. The separate treatment of each category--i.e. the inclusion and exclusion of various alcoholic beverages from each chapter--evidences legislative intent that each beverage be, for certain purposes, treated separately. Idaho Code § 23-1012 sets the permissible hours during which beer may be sold. The statute clearly limits beer sales to 1 o'clock a.m.

In addition, Idaho Code § 23-1332 provides that:

Wine sold for consumption or dispensed on the licensed premises (of a liquor by the drink licensee) may be sold, consumed or dispensed only during hours that beer can be sold, consumed or dispensed pursuant to the laws of this state.

In Attorney General Opinion 73-227, this office concluded that a retail liquor by the drink license did not confer upon the licensee the right to sell wine on Sundays, absent compliance with Chapter 13 (the County Option Kitchen and Table Wine Act). We found that the separate treatment of different alcoholic beverages by the legislature was intentional and that different statutorily set hours and days for the sale of beer and wine, as opposed to liquor by the drink, must be adhered to by a liquor by the drink license. We stated:

It is a canon of legislative construction to find against an implied repeal of existing legislation. I am constrained to advise that the legislature did not intend to repeal existing legislation by the enactment of H.B. 206 (which set different hours for

the consumption of beer and wine as opposed to liquor-by-the-drink). Holders of a retail liquor by the drink license may continue to sell wine for consumption on the premises notwithstanding the alcohol by weight in such beverage. Such sales can only occur during those hours and days permitted for alcoholic beverages per se. In other words, the holder of a retail liquor by the drink license may not sell kitchen and table wine on Sunday nor on proscribed days and hours.

If a holder of a retail liquor by the drink license intends to sell wine for consumption off the premises during permissible days and hours, he must also possess a retail wine license. On the other hand, the holder of a retail wine license not possessing a retail liquor by the drink license, may only sell kitchen and table wine for consumption off the premises during permissible hours of beer sale.

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H 708 presents the reverse factual situation as liquor by the drink hours are treated more expansively than beer and wine consumption hours. We are likewise constrained to advise that H 708 does not amend by implication the hours when beer and wine may be sold by a retail liquor by the drink establishment.

Concerning your second question regarding the grace period provided by H 708, it is our conclusion that all drinking on licensed premises must stop at 2 o'clock a.m. H 708 provides that:

(3) Any patron present on the licensed premises after the sale of liquor has stopped as provided in subsection (1) above shall have a reasonable time, not to exceed thirty (30) minutes, to consume any beverages already served. (emphasis added.)

Subsection (1) provides in general for a 1 o'clock a.m. cessation of drinking. H 708 by adding a new subsection (2) extends liquor by the drink sales to 2 o'clock a.m. By limiting the applicability of the grace period to only those hours specified in

subsection 1, the legislature failed to extend the grace period to the extended hours provided for in the new subsection 2.

In summary, it must be pointed out that H 708 accomplished many of the goals envisioned by the 48th Legislature, including the ability of retailers to sell liquor by the drink on Sundays and until 2:00 o'clock a.m. However, sales of beer and wine must be concluded by 1:00 a.m., with unconsumed beer and wine beverages removed from tables by 1:30 o'clock a.m. and all liquor-by-the-drink beverages removed from tables at 2:00 o'clock a.m.

AUTHORITIES CONSIDERED:

1. Statutes:

Idaho Code § 105
Idaho Code § 23-901
Idaho Code § 23-902(g)
Idaho Code § 23-927
Idaho Code § 23-1001(a)
Idaho Code § 23-1012
Idaho Code § 23-1303(a)
Idaho Code § 23-1332

2. Idaho Cases:

State v. Bush, 93 Idaho 538, 466 P.2d 478 (1970).

Local 1494 of International Association of Firefighters v. City of Coeur d'Alene, Idaho, 630, 639, 586 P.2d 1346 (1978).

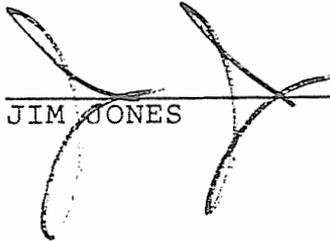
Intermountain Health Care Inc. v. Board of County Commissioners of Madison County, 710 P.2d 595, 109 Idaho 685 (1985).

3. Other Authorities:

Attorney General Opinion 73-227

DATED this 27th day of June, 1986.

ATTORNEY GENERAL
State of Idaho



JIM JONES

ANALYSIS BY:

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