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ATTORNEY GENERAL OPINION NO. 86-17

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Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Is a designation of the county on a farm product financing statement a reasonable and legally sufficient description of the real estate where farm products are produced or located?

CONCLUSION:

The designation of the county alone is a reasonable and legally sufficient description of the real estate on which farm products are grown or located, for the purpose of perfecting a security interest in farm products by filing a farm products financing statement.

ANALYSIS:

Necessity of Legal Description

Your question deals with farm products financing statements and, in particular, the amount of detail needed to describe the real estate on which farm products are grown or located. It has been suggested by one attorney that a full legal description of the real estate is required or is the preferred method of compliance. Others have contended that mere designation of the county is legally sufficient to describe the real estate where farm products are produced or located.

This dispute stems from a conflict between Idaho Code §§ 28-9-110 and 28-9-402(9)(f). The former statute, governing "sufficiency of description" matters in general, states:

[A]ny description of real property [must] be a legal description, that is, a description setting forth a United States government subdivision, the lot and block of a private subdivision, or metes and bounds of the premises affected by the security interest . . .

Thus, if Idaho Code § 28-9-110 governs, it would appear that a full legal description is necessary. Such was the conclusion reached by the Idaho Bankruptcy Court in 1983 in the case of Wood v. Pillsbury Co., 38 Bankr. 375.

On the other hand, Idaho Code § 28-9-402(9)(f), as amended in 1986, describes the "formal requisites of financing statements" as follows:

A financing statement for farm products is sufficient if it contains the following information:

- (f) A reasonable description of the real estate (including county) where the farm products are located. This provision may be satisfied by a legal description, but a legal description is not required.

Clearly, the two statutes conflict. Idaho Code § 28-9-110 applies to all of Chapter 9 of the Uniform Commercial Code (U.C.C.) and requires that "any description of real property be a legal description." (Emphasis added.) By contrast, § 28-9-402(9)(f) states that "a legal description is not required" in the case of farm products financing statements.

Three rules of statutory construction are relevant in determining the priority of such conflicting statutes. The first rule of construction is that a specific statute will prevail over a general statute. State v. Wilson, 107 Idaho 506, 508, 690 P.2d 1338, 1340 (1984); Packard v. Joint School Dist. No. 171, 104 Idaho 604, 610, 661 P.2d 770, 776 (Id. App. 1983). Idaho Code § 28-9-402(9)(f) relates to only one very specific type of document (farm products financing statements) among the many that

are addressed in Chapter 9 of the U.C.C. By contrast, Idaho Code § 28-9-110 is a general section applicable to the whole chapter. Thus, under the first rule of statutory construction, § 28-9-402(9)(f) must prevail.

The same result follows under the second applicable rule, namely, that "to the extent of a conflict between the earlier and later statute ... , the more recent expression of legislative intent prevails." Mickelsen v. City of Rexburg, 101 Idaho 305, 307, 612 P.2d 542, 544 (1980). Section 28-9-110, the general provision governing real estate description, was adopted as a part of the complete Uniform Commercial Code in 1967, and has never been amended. Section 28-9-402 was amended in part by the addition of subsection (9) in 1986. As the later expression of legislative intent, it prevails over § 28-9-110 to the extent of any conflict.

The third relevant rule of construction is that a statute should be construed to implement the intent of the legislature as revealed in the history and purposes of the act. Leliefeld v. Johnson, 104 Idaho 357, 367, 659 P.2d 111, 121 (1983). The language in § 28-9-402(9)(f), stating that a legal description is not required, was added by senate amendment to Senate Bill No. 1391, and finally signed into law as Senate Bill No. 1490. The addition of this amendment is a clear indication of a specific legislative intent not to require a legal description. Further, the whole purpose of the legislation was to adopt a central filing system to comply with section 1324 of P.L. 99-198, which does not require a legal description.

It is clear from application of the judicially acknowledged rules of construction that a legal description of the real estate on which farm products are produced or located is not required on a farm products financing statement.

Sufficiency of County Designation

We next address the contention that more than designation of the county is required as a description of the real estate where farm products are grown or located. This argument is based on the language in § 28-9-402(9)(f), requiring "a reasonable description of the real estate (including county)" It has been argued that the use of the parenthetical "(including county)" implies that more is required. However, examination of the history of that language dispels any such reading. At the time the legislation was under consideration by the 1986 session of the legislature, the parallel federal regulation had not yet been

published. The Idaho legislature therefore had to accommodate the provisions of § 1324 of P.L.99-198 and yet retain the flexibility to meet the requirements of a federal regulation yet to be promulgated. It was known that § 1324(c)(4)(D)(iv) of P.L.99-198 required "a reasonable description of the property, including county" It was not known what the federal regulation would require beyond the county designation, if anything. So the language closely tracked the language of the federal law. There is, therefore, no inference that more than a county designation is required by Idaho Code § 28-9-402(9)(f).

This reading is bolstered by the other amendments made to § 28-9-402 by the Idaho Legislature in 1986. Subsection 3 was amended to delete the example of a form for farm products financing statements, which had previously stated:

(If the collateral is crops) The above
described crops are growing or are to be
grown on:
(Describe Real Estate).....

Thus, the cross reference that would trigger the general real estate description requirements of § 28-9-110 was eliminated as to farm products, while being retained for other collateral such as timber, minerals and the like (including oil and gas) and fixtures. The clear contrast between farm products and other collateral is further highlighted by the amendment to § 28-9-402(1), which spells out "formal requisites of financing statements" in a uniform manner for all forms of collateral "[e]xcept as provided in subsection (9) of this section," namely, the section governing farm products financing statements.

The final question remains: whether a county designation constitutes a "reasonable description of the real estate..." with nothing more. We take some guidance from the fact that the state administrative rule, at IDAPA 34.U.01.c.viii, requires only the designation of the county. As a general rule, "an agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action." Hopp v. State, 100 Idaho 160, 163, 595 P.2d 309, 312 (1979). In his adoption of the administrative rule, that is precisely what the Secretary of State did. Further,

The construction given a statute by the executive ... officers of the State is entitled to great weight and will be

followed ... unless there are cogent reasons
for holding otherwise. Id.

The administrative rule is, therefore, presumptively valid in
requiring no more than a county designation.

There is, however, more support for the validity of the
administrative rule. Unlike the legislature, the Secretary of
State had the benefit of a federal regulation by the time he
drafted the rule. The federal regulation requires only the
designation of the county to satisfy the federal law's requirement
for a reasonable description of the property where farm products
are produced. 9 C.F.R., § 205, 103(a)(3). Thus, the state
administrative rule does no more nor less than the federal
regulation.

Finally, the state administrative rule was part of a very
detailed application for certification by the United States
Department of Agriculture (USDA). After thorough review, USDA
certified the Idaho system. Since the statutory standard under
both the federal and state statutes is "a reasonable description,"
the state administrative rule's requirement for only the
designation of the county must be presumed valid.

AUTHORITIES CONSIDERED:

Idaho Statutes

Idaho Code § 28-9-110

Idaho Code § 28-9-402(9)(f)

Idaho Code § 28-9-402(1)

Cases

Wood v. Pillsbury Co., 38 Bankr. 375

State v. Wilson, 107 Idaho 506, 508, 690 P.2d 1338, 1340 (1984)

Packard v. Joint School Dist. No. 171, 104 Idaho 604, 610, 661
P.2d 770, 776 (Id. App. 1983)

Mickelsen v. City of Rexburg, 101 Idaho 305, 307, 612 P.2d
542, 544 (1980)

Leliefeld v. Johnson, 104 Idaho 357, 367, 659 P.2d 111, 121
(1983)

Hopp v. State, 100 Idaho 160, 163, 595 P.2d 309, 312 (1979)

Idaho Administrative Rules and Regulations

IDAPA 34.U.01.c.viii

Federal Statutes

P.L.99-198, § 1324

Federal Administrative Rules and Regulations

9 C.F.R., § 205, 103(a)(3)

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Analysis by:

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cc: Idaho Supreme Court
Supreme Court Library
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