



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

February 12, 1986

The Honorable Stanley Hawkins
District 33 Representative

STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION
AND IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

RE: 4-1/2% Sales Tax To Balance Budget

Dear Representative Hawkins:

This is in response to your question as to the legality of using a one-half percent sales tax increase to eliminate the F.Y. 1986 revenue shortfall. The tax would begin March 1, 1986, and continue through F.Y. 1987.

It would not be possible to borrow funds now to fund F.Y. 1986 appropriations to be repaid from F.Y. 1987 revenues due to the debt limitation of Idaho Constitution, art. 8, § 1. However, the legislature can accomplish nearly the same result by adjusting the F.Y. 1986 and F.Y. 1987 appropriations as follows:

The F.Y. 1986 appropriation for public school support could be reduced by an amount sufficient to balance the F.Y. 1986 budget. The F.Y. 1987 appropriation for public schools could be increased by the amount of the F.Y. 1986 reduction. The F.Y. 1987 increase could be paid in July, 1986. The increase in the F.Y. 1987 public school appropriation could be financed by additional sales taxes.

Such legislation would affect the time when public schools receive their appropriation. The F.Y. 1986 reduction would be taken from the May 15, 1986, distribution which would otherwise

The Hon. Stanley Hawkins
District 33 Representative
Page 2
February 12, 1986

occur pursuant to Idaho Code § 33-1009. The F.Y. 1987 increase could be distributed with the July 15, 1986, normal distribution.

While such legislation would delay school district's receipt of the funds by two months, it would satisfy constitutional requirements if properly drafted. A similar approach was used to balance the F.Y. 1983 budget (ch. 4, 1983 Sess.L.). A copy of that act is enclosed. The reduced F.Y. 1986 appropriation and the increased F.Y. 1987 appropriation should be stated in specific dollar amounts to meet constitutional requirements. See, e. g., Herrick v. Gallet, 35 Idaho 13, 204 P. 477 (1922); McConnell v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931).

Idaho Constitution, art. 7, § 11, restricts appropriations and expenditures to the amount of revenue applicable to the appropriations and expenditures. Idaho Constitution, art. 8, § 1, provides a \$2,000,000 limit upon state debts and liabilities extending beyond a fiscal year without an election authorizing such debt. These provisions would not be violated by adjustment of the appropriations as discussed above.

It should be noted that the proposal would pay additional funds to the public schools early in F.Y. 1987 and raise additional revenues to fund the appropriation after the schools are paid. This will result in additional internal or external borrowing within the 1987 fiscal year. Such borrowing funded by assessed but not yet collected taxes is statutorily authorized and the procedure has been upheld by the Idaho Supreme Court. Black v. Eagleson, 32 Idaho 276, 181 P. 934 (1919); State, ex rel. Hall v. Eagleson, 32 Idaho 280, 181 P. 935 (1919).

This is not an official general's opinion, but is provided for your legal guidance. If you have any questions regarding this letter, please let me know.

Sincerely,



David G. High
Deputy Attorney General
Chief, Business Affairs and
State Finance Division

DGH/jas

Encl.