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Mr. Bruce Balderston
Legislative Auditor
STATEHOUSE MAIL

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

Dear Mr. Balderston:

You have asked whether Idaho Code § 56-450 gives the department of health and welfare legal authority to account within the special health and welfare trust account, for state employee monies derived from bake sales, yard sales, donations, and profits from pop and candy machines utilized by state employees.

It is our conclusion that Idaho Code § 56-450 does not provide for the use of the health and welfare trust account for the deposit of employee funds.

Idaho Code § 56-450 requires the director of health and welfare to deposit into the special health and welfare trust account, all funds and/or the proceeds from the sale of any items "donated, bequeathed, devised or . . . granted" to the department of health and welfare. The funds thus deposited are then to be invested by the state treasurer in the manner provided for idle state monies under Idaho Code § 67-1210.

It is clear that the special health and welfare trust account was established to assist the department in accomplishing its intended purpose or mission. The use of this trust account for non-state monies was not intended by the legislature when it enacted § 56-540. The wording used to identify the source of the funds, clearly indicates that the framers intended that the grantors, devisees or testators relinquish their rights, interest or title in the property donated, and that their rights, title and interests vest in the state department of health and welfare.

By contrast, the funds at issue here belong to the state employees, whose efforts generated them, and whose benefit they are intended for. Nowhere is there any indication that the funds in question actually "belong" to the department of health and welfare, or that their intended use is designed to further the department's purpose or mission. Rather, it appears that the monies in question here are intended for the sole benefit of the department's employees.

To allow department employees to benefit from the administration of the trust account, in the form of reduced costs and fees, would result in the taxpayers of the state paying for such administration costs.

Since the statute itself does not specifically authorize the director to utilize the trust account in the manner described, it is clear that the director lacks any other discretionary authority to so utilize the trust account as a repository for funds (1) whose purpose is not to further the department of health and welfare's purpose or mission and (2) whose rights, title, and interest have not all been vested in the department of health and welfare.

Therefore, in light of the foregoing, it is our opinion that the special trust account is not the appropriate repository for employee funds. In other state agencies, such funds are routinely held by a trusted employee within the department or division. This arrangement has the drawback of causing security problems and losing interest on funds, but it avoids the problem of commingling private and public funds. It is our experience that this is a general practice throughout state government; it appears to be the most convenient alternative.

Very truly yours,



PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK/tg