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February 26, 1988

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STATEHOUSE MAIL

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Who has Authority to Sign Expense Vouchers and Claims
for the State Senate

Dear Mr. Williams:

You have requested advice on whether the lieutenant governor, as president of the senate, or the president pro tempore has the authority to authorize expenditures pursuant to Idaho Code § 67-451(3). This section authorizes "the presiding officers of each house of the legislature" to make expenditures out of the legislative account.

The language of the statute raises the questions of (1) who is a "presiding officer" of the senate and (2) whether it is possible to have more than one presiding officer. Once the identity of the person or persons authorized in Idaho Code § 67-451(3) is resolved, the next issue is whether the statutory language is conclusive and constitutional. In other words, how does Idaho Code § 67-451(3), which authorizes the presiding officers of each house to expend funds, interact with both art. 4, § 9, of the Idaho Constitution, which permits the senate to determine its own officers and rules of proceeding, and art. 4, § 13, which names the lieutenant governor as the president of the senate?

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CONCLUSION:

Article 4, § 3, of the Idaho Constitution designates the lieutenant governor as president of the senate which includes the duty to act as presiding officer of the senate. Therefore, for purposes of interpreting Idaho Code § 67-451(3), the lieutenant governor is the presiding officer of the senate. Both Idaho Code § 67-451(3) and the ordinary and natural meaning of "presiding officer" contemplate that only one person be authorized to sign vouchers and claims for the senate. Consequently, the lieutenant governor, as the presiding officer of the senate, must sign expense vouchers and claims pursuant to Idaho Code § 67-451(3).

Article 3, § 9, of the Idaho Constitution is a general provision that permits the senate to elect its officers. However, the senate may not choose its presiding officer since a more specific provision, art. 4, § 14, mandates that the lieutenant governor serve as president of the senate. The senate's rules recognize the constitutional requirement providing that the lieutenant governor is the presiding officer of the senate.

Article 3, § 9, also gives the senate general authority to pass its own rules of proceeding for internal governance and order. This general section does not permit the senate to unilaterally override statutory or constitutional requirements regarding expenditure of funds. An internal senate rule cannot alter the statutory authority granted to the lieutenant governor in Idaho Code § 67-451(3) to sign expense vouchers and claims. The current senate rules acknowledge this by providing that statutory provisions prevail over the rules if those rules are in conflict with statutes.

Article 2, § 1, prohibits executive branch officers from performing legislative powers except as permitted by the constitution. The constitution makes the lieutenant governor the presiding officer of the senate and provides that he may vote in the event of a tie. As president of the senate, he may perform such administrative duties as are delegated to him by statute or rule of the senate.

In performing his duties under Idaho Code § 67-451(3), the lieutenant governor performs the ministerial function of signing vouchers and claims which are in proper form and authorized by the senate. The senate itself determines what senate expenditures are authorized.

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ANALYSIS:

A. WHO IS THE "PRESIDING OFFICER" OF THE SENATE PURSUANT TO IDAHO CODE A 67-451(3)?

Idaho Code § 67-451(3) provides in pertinent part:

(3) The presiding officers of each house of the legislature are hereby authorized to make expenditures out of the legislative account for any necessary expenses of the legislature and the legislative account is hereby perpetually appropriated for any necessary expenses of the legislature. (Emphasis added.)

"Presiding officer" is not defined in either the Idaho Constitution or the Idaho statutes. The Idaho Constitution, however, states that "[t]he lieutenant governor shall be president of the senate. . . ." Article 4, § 13. It is clear that the founding fathers, in naming the lieutenant governor president of the senate, expected him to act as its presiding officer. This is evident from both the constitutional debates as well as the ordinary meaning of "president." According to the debates, the lieutenant governor was to be paid only "when he is in actual service as presiding officer of the senate." Proceedings and Debates of the Constitutional Convention of Idaho 1889, Vol. 1, at 412 (emphasis added). Furthermore, the pay was the same as that for the speaker of the house, thus reinforcing the notion that the lieutenant governor, as president of the senate, is its presiding officer, just as the speaker is the presiding officer of the house.

Although the Idaho courts have never defined "president," the Missouri Supreme Court has in State ex inf. Danforth v. Cason, 507 S.W.2d 405 (Mo. 1973). In Cason, the lieutenant governor, who under Missouri Constitution is the president of the senate, and the president pro tempore of the senate disagreed as to who should be the "presiding officer." The Missouri senate passed an internal rule which stated "the president shall preside over the senate at the pleasure of the president pro tem who may assume the chair at will, or the president pro tem may designate some other senator to preside." The president pro tem argued that the rule permitted him to preside over the senate to the exclusion of the lieutenant governor. The lieutenant governor replied that the Missouri Constitution, which specifically named

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the lieutenant governor as the senate president, controlled over the senate rule.

In interpreting the constitutional provision, the Missouri court relied on "the natural and ordinary meaning of words." Id. at 408. After a lengthy discussion on the meaning of "president" and extensive quotations from various dictionaries, the Missouri court concluded that "the ordinary, usual and generally understood meaning of the term 'president of the senate,' when used in constitutional provisions assigning that role to the lieutenant governor, has been and is the presiding officer of that body." Id. at 412. This analysis would also apply to an interpretation of the same words in the Idaho Constitution. See, Attorney General Opinion No. 75-88 ("Presiding Officer" of senate is the lieutenant governor.) Thus the lieutenant governor as president of the Idaho senate is at least a presiding officer of the senate. The question then becomes whether he is the presiding officer. In other words, the issue is whether Idaho Code § 67-451(3) permits two presiding officers of the senate, each of whom would be authorized to sign vouchers pursuant to Idaho Code § 67-451(3).

Although it is possible to have many officers of the senate, logically only one person at a time can actually preside. This is inherent in the definition of "president pro tempore." "Pro tempore" is Latin for "for the time being." A president pro tem, therefore, is one who presides "temporarily or during the absence of a regularly elected official." Webster's Third New International Dictionary (1971). A 1984 Attorney General's opinion also concluded that the constitutional language precluded more than one presiding officer at any one time. Attorney General Opinion No. 75-88, p.4. Because of the logical meaning of the term "presiding officer," there is no semantic ambiguity in Idaho Code § 67-451(3). Therefore, the person authorized to sign vouchers pursuant to the statute is the lieutenant governor.

B. DOES IDAHO CONSTITUTION ART. 3, § 9, WHICH GIVES THE SENATE THE RIGHT TO CHOOSE ITS OWN OFFICERS, OVERRIDE THE IDAHO CONSTITUTION ART. 4, § 13, WHICH MAKES THE LIEUTENANT GOVERNOR THE PRESIDING OFFICER OF THE SENATE?

Idaho Const. art. 3, § 9, provides in pertinent part:

Each house when assembled shall choose its own officers; judge of the election, qualifications and returns of its own members,

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determine its own rules of proceeding, and sit upon its own adjournments; . . .

Thus, once the identity of the "presiding officer" of the senate is determined, the question becomes whether art. 3, § 9, of the Idaho Constitution allows the senate to choose its presiding officer from among its members or whether the senate must accept the lieutenant governor as its president. The answer lies in how the senate's authority to "choose its own officers" (art. 3, § 9) interacts with the requirement that the lieutenant governor be president of the senate (art. 4, § 13).

The senate cannot constitutionally remove the lieutenant governor from his position as "presiding officer" by resorting to art. 3, § 9, and choosing its own president. Cason, supra, is directly on point. In resolving the conflict between the lieutenant governor, who was relying on constitutional language similar to art. 4, § 13, and the president pro tempore, who was relying on a senate rule adopted pursuant to a constitutional provision similar to art. 3, § 9, the Missouri Court ruled in favor of the lieutenant governor. The court stated:

While [the Missouri Constitution] does confer on the senate the right to establish its own procedural rules, the section expressly limits that right by providing that such authority is subject to exceptions provided in the Constitution itself. One of those exceptions is established by Art. IV, § 10, which makes the lieutenant governor president and, as we interpret the language, presiding officer of that body. The effect of such provision is to provide a constitutional exception to the right of the senate to specify by rule who shall be its presiding officer. The senate may elect its president pro tempore or otherwise provide for persons to preside in the absence of the president, but it may not by rule dilute the constitutional authority conferred on the lieutenant governor by Art. IV, § 10.

Cason, supra, at 413.

The court therefore held that any internal senate rule that conflicted with the constitutional provisions requiring the

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lieutenant governor to serve as president was unconstitutional. Id. at 412. The court also stated that the Missouri equivalent of art. 4, § 13, is a specific grant of authority that must prevail over the general grant of authority articulated in the Missouri equivalent of art. 3, § 9. Id. at 413. The Missouri court, however, held that there was no conflict between the two provisions. "When read together, they mean that the lieutenant governor, in his capacity as president of the senate, is the presiding officer of that body and has a constitutional right to so serve, but that in presiding he must conform to procedural rules of the senate authorized and adopted pursuant to (the internal rule-making provision of the Missouri Constitution) to govern the conduct of the senate's business." Id. at 413-414.

Therefore, the constitutional clause allowing the senate to choose its own officers must be read in conjunction with art. 4, § 13, and the senate may not choose its president.

C. DOES ART. 3, § 9, WHICH GIVES THE SENATE THE RIGHT TO DETERMINE ITS OWN RULES OF PROCEEDING, INCLUDE THE RIGHT TO PRESCRIBE PROCEDURES FOR PROCESSING EXPENSE VOUCHERS IN A MANNER CONTRARY TO IDAHO CODE § 67-451(3)?

Article 3, § 9, also grants the senate authority to adopt its own rules of proceeding. Those rules are necessary for the orderly proceedings of the senate, but are not at all substantively relevant for its business. Gooch, Legal Nature of Legislative Rules of Procedure, 12 Va.L.Rev. 527, 528-529 (1926).

However, the power of those rules is not absolute. "It is, of course, impliedly limited by the general nature of American government and more especially by the principle of constitutional limitation. . . . [The legislature] may not by its rule ignore constitutional restraints or violate fundamental rights." Id. at 531. This principle has been expanded upon in other cases. Specifically, the United States Supreme Court has stated "the constitution empowers each house to determine its rules of proceeding. It may not by its rules ignore constitutional restraints or violate fundamental rights and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained." United States v. Ballin, 144 U.S. 1, 5 (1891).

The role of the rules of procedure in relation to the constitution and statutes is more clearly defined in Heiskell

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v. City of Baltimore, 4 A. 116, 118 (1897), wherein the court stated:

"Rules of procedure" are rules made by any legislative body as to the mode and manner of conducting the business of the body. They are intended for the orderly and proper disposition of the matters before it. Thus, what committees, and upon what subjects they shall be appointed; what shall be the daily order in which the business shall be taken up; in what order certain motions shall be received and acted upon; and many other kindred matters,--are proper subjects of the rules of procedure. These rules operate nowhere except in the legislative hall that adopts them; and in this country, where what is called in England standing orders are almost unknown, expire at the end of the session. But these rules of procedure never contravene the statute or common law of the land. When the constitution of the United States gave to each house of congress, and the constitution of the state of Maryland the right to each house of the general assembly, to determine its rules of proceeding, it was never held for a moment that such a right included the power to change any existing statute or common law. (Emphasis added.)

The Idaho Supreme Court discussed the "rules of proceeding" provisions of Idaho Const. art. 3, § 9, in Keenan v. Price, 68 Idaho 423, 437, 195 P.2d 62 (1948). The court noted that:

The power of the legislative houses to make their own rules is for orderly procedure and the expedition and disposition of their business.

This construction of the "rules of proceeding" language is consistent with the construction given to such language in the cases discussed above.

An earlier case, Cohn v. Kingsley, 5 Idaho 416, 49 Pac. 985 (1897) also indicated that art. 3, § 9, of the constitution must be read in conjunction with the other provisions

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of the constitution. Id. at 436. Article 3, § 9, does give the senate the authority to make its own internal rules of proceeding. But that authority cannot be extended to nullify a statute when the statute is appropriately and constitutionally enacted. To the extent that a rule dealing with processing expense vouchers conflicts with a statutory provision, that rule must fall and the statute must prevail.

D. THE SENATE'S OWN RULES SUPPORT THE VIEW THAT THERE IS ONLY ONE PRESIDING OFFICER WHO IS THE PRESIDENT OF THE SENATE AND THAT STATUTORY PROVISIONS TAKE PRECEDENCE OVER RULES TO THE EXTENT OF ANY CONFLICT.

The senate's own rules contemplate that the president, and not the president pro tem, is the one who actually presides over the senate floor. Rule 1 of the senate's rules is labelled "Presiding Officer." The rule clearly contemplates only one "presiding officer" at a time. According to the rule, the president pro tempore performs the functions and duties of the president "in his (the president's) absence or inability to serve."

In Rule 1(c), the president is specifically directed to conduct the business of the senate: "The President shall take the Chair every day promptly at the hour to which the senate stands adjourned, shall call the senate to order, and a quorum being present shall proceed to the business of the senate." Rule 5 states that: "The President of the senate has general control and direction of the senate Floor, while presiding, and shall preserve order and decorum therein" (Emphasis added.) Furthermore, Rule 47(B) specifically states that the laws or constitutional provisions prevail over the rules of proceeding.

Therefore, by the senate's own rules, the president of the senate is the presiding officer, and by statute, the presiding officer -- in the case of the senate, the lieutenant governor -- is the only one with authority to sign vouchers required by Idaho Code § 67-451(3).

E. CONSTITUTIONAL ROLE OF LIEUTENANT GOVERNOR AS PRESIDENT OF THE SENATE.

Although the lieutenant governor is the president of the senate, his legislative duties are constitutionally circumscribed. Because he is a member of the executive branch (Idaho Const. art. 4, § 1) and not the legislative branch, he may not exercise legislative powers except as expressly permitted by

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the Idaho Constitution. See, Idaho Const. art. 2, § 1; State ex inf. Danforth v. Cason, supra at 419. To do otherwise would violate the Separation of Powers clause which states:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Idaho Const. art. 2, § 1.

There is no separation of powers violation when the lieutenant governor presides over the senate or performs administrative functions assigned to him as president of the senate because those functions are provided for by Idaho Const. art. 4, § 13. However, as presiding officer of the senate, the lieutenant governor may not assign bills to committees or establish rules regarding points of order because those are legislative functions and the senate rules would govern such functions. See, Danforth v. Cason, supra at 417-19. In that case, the Missouri Supreme Court held that senate rules giving the president pro tem the authority to assign bills to committee and to act as parliamentarian were constitutional. Because those powers were not specifically given to the lieutenant governor in the constitution, the lieutenant governor must defer to the senate rules.

The courts will defer to the rules of the senate as long as those rules do not infringe on either the statutes or the constitution. For example, in Beitelspacher v. Risch, 105 Idaho 605, 671 P.2d 1068 (1983), the Idaho Supreme Court specifically refused to interpret rules governing the parliamentary procedure in the legislature. According to the supreme court:

The Senate, as part of the legislature, is an independent branch of government. Our state Constitution, art. 2, § 1, divides our government into three distinct departments and forbids members of one department, for example the judiciary, from exercising powers properly belonging to one of the other departments,

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such as the legislature. Art. 3, § 9, of our Constitution gives each house of the legislature the power to determine its own rules of proceeding. Thus, this power is specifically reserved to the legislative branch by the Constitution, and we cannot interfere with that power. The interpretation of internal procedural rules of the Senate is for the Senate.

105 Idaho at 606.

In other words, the judiciary, as well as the executive branch, must defer to the legislature in the interpretation of its own internal rules. See, Malone v. Meekins, 650 P.2d 351 (Alaska 1981) (Alaska judiciary refused to rule on the merits in a claim by an ousted speaker of the house that his removal and the election of his successor violated the house internal rules); see also, Keenan v. Price, supra at 437 (failure to comply with its internal rules does not invalidate legislative acts), but see, Cohn v. Kingsley, supra (legislature must affirmatively comply with constitutional mandates in enacting valid laws).

Just as the judiciary must defer to the legislature when it is acting in its legislative capacity, so too must the lieutenant governor as a member of the executive branch. He must defer to the rules of the senate and may only assume legislative functions that are clearly delineated in the Idaho Constitution or administrative functions assigned to him as president of the senate.

F. STATUTORY ROLE OF PRESIDING OFFICERS IN APPROVING VOUCHERS AND CLAIMS.

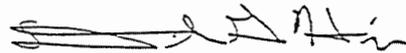
Idaho Code § 67-451(3) provides that the signature of a presiding officer on a voucher or claim is "sufficient authority for the state auditor to pay the same." This provision does not allow the executive branch of government (state auditor) to perform as extensive a review of expenditures as would be allowable when reviewing executive branch expenditures. The provision acknowledges the fact that the legislature is an independent branch of government with authority to determine how it will expend its funds. Idaho Code § 67-451(3) designates the presiding officers of the house and senate as the persons to carry

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out the will of the legislative branch in processing vouchers and claims.

We view this role of the presiding officers in approving vouchers and claims to be a ministerial rather than a discretionary function. The presiding officers should review vouchers and claims to see if they are authorized, in proper form, and properly chargeable against the appropriation. However, discretionary authority to determine what the appropriation should be used for lies with the house and senate respectively. It is up to each house to determine what expenses are authorized and the procedure used to authorize the expenses. Thus, the statute contemplates that the presiding officers' roles in approving vouchers and claims are to give effect to the will of the house and senate respectively.

Sincerely,



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ANALYSIS BY:

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DGH/PN/scw