



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION NO. 89-11

TO: Yvonne S. Ferrell, Director
Idaho Department of Parks and Recreation
Statehouse Mail
Boise, ID 83720

Request for Attorney General's Opinion

RE: Use of Moneys in County Vessel Fund and State Waterways Improvement Fund.

Dear Ms. Ferrell:

QUESTION PRESENTED:

You have asked for legal guidance regarding appropriate uses of moneys in the county vessel funds and the state waterways improvement fund (WIF). For each account you inquired as to the propriety of expenditures for roads and for each of the following specific activities:

Items used solely for boaters and boating activity:

1. Boat docks
2. Boat ramps
3. Boat pumpout facilities (on-the-water boat sewage removal facilities)

Items subject to multiple users:

1. Restroom facilities
2. Parking areas

3. Picnic facilities
4. Camping facilities
5. Landscape improvements
6. Fishing docks (land access only - no boat access)

CONCLUSION:

Moneys in the county vessel funds can be spent only on water-related recreational boating improvements. This includes, but is not limited to, boat docks, ramps, pumpout facilities, and boat trailer parking, and on enforcement of boating laws.

Moneys in the WIF may be expended for land based projects, but must be for the primary benefit of boaters engaging in boating activities, and must fall within or be incidental to the following categories: protection and promotion of safety; waterways improvement; development/improvement of boating related parking, ramps, or moorings; waterways marking; search and rescue. Permissible expenditures would include but are not limited to boat docks, ramps, pumpout facilities, restrooms, camping facilities and picnic areas which are primarily accessed by boat, and items incidental to such development, including landscaping.

ANALYSIS:

Your letter expresses a concern about the propriety of expending moneys in the county vessel funds and the WIF on particular types of projects. While

the funds are both related to boating activities, each has different revenue sources and statutory directives for expenditures of the moneys.

A. County Vessel Fund (Idaho Code § 67-7013 (7))

The county vessel funds, as currently constituted, are made up of revenues collected from the sale of boat registrations ("numbering") and use permits. The revenues from the sale of registrations and use permits are first remitted to the state treasurer for deposit in the state vessel account (85%) and the park and recreation account (15%). The funds in the state vessel account are then returned to the eligible counties under a user designation system set out in Idaho Code § 67-7013 (5). The moneys in the county vessel fund are tightly restricted in the purposes for which they can be spent. The moneys "shall be used and expended by the board of county commissioners for the exclusive purpose of maintaining and improving the public waters of this state for recreational boating purposes and for law enforcement activities related to the enforcement of the provisions of law." § 67-7013 (7).

This statutory directive is clear and unambiguous. The moneys in the county vessel funds can be spent only (1) to maintain and improve the public waters for recreational boating purposes; and (2) for boating law enforcement. The first provision limits the expenditure of these funds in several ways. Expenditures are primarily for the benefit of recreational boaters engaging in boating activities; these activities must be in, on, or

very near the water. This clearly includes boat docks, boat ramps, and boat pumpout facilities.

Boat trailer parking would also be an appropriate expenditure of county vessel funds because boat launching facilities (docks and ramps) usually require the use of a vehicle and trailer which must be stored on land while the boating activity occurs on the water.

The remaining facilities enumerated in your opinion request -- roads, restrooms, picnic facilities, camping facilities, landscaping, and land access fishing docks -- do not appear to be facilities that maintain or improve "the public waters of this state for recreational boating purposes." (Emphasis added.)

In summary, the statute expressly limits the expenditure of county vessel funds to water-based recreational boating improvements and enforcement of boating laws. Expenditure of county vessel funds for other purposes, either land-based, or for other than recreational boating, is clearly improper.

B. State Waterways Improvement Fund (Idaho Code § 57-1501)

The state waterways improvement fund was created in 1963. The purposes of the WIF are broader than those of the county vessel funds. WIF funds can be used "for the protection and promotion of safety, waterways improvement, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and

personal property." Idaho Code § 57-1501, 1963 Idaho Session Laws, Ch. 175, § 3, p. 500. While § 57-1501 has subsequently been amended on two occasions, the cited language appears unaltered in the current code.

Funding for the WIF has always come from state gasoline tax revenues. Initially the program was funded by a one percent (1%) share of these revenues. In creating the WIF the legislature stated:

The legislature hereby finds a fact that of all the taxes collected under Section 49-1210 and Section 49-1231, Idaho Code, 1.4% are derived from motor fuels and special fuels used for marine purposes to propel vessels on the inland and surrounding waterways of this state and that .4% is sufficient to pay the costs of administration and claimed refunds by marine users of special fuels. The legislature hereby declares that it is the policy of this state to use the funds derived from the sale of motor fuels and special fuels for marine use to improve boating facilities throughout this state.

1963 Idaho Session Laws, Ch. 174, § 1, p. 500.

The gas tax distribution has been changed several times since 1963, but a portion of the revenue has always gone to the WIF. The current distribution formula, found at Idaho Code § 63-2412, recognizes that not all gasoline was purchased for use on the state's roads and highways (which prior to 1963 received one hundred percent (100%) of the gas tax revenue). The separation of tax revenue generated by the sale of marine fuels was simply a refinement of the user-pay system for funding roads and highways which the gas tax provided.

The statutory limitations on the expenditure of funds in the WIF are also clear and unambiguous, though of somewhat broader scope than those imposed on the county vessel funds. Permissible uses are: (1) protection and promotion of safety; (2) waterways improvement; (3) development/improvement of boating related parking; (4) development/improvement of boat ramps; (5) development/improvement of boat moorings; (6) waterways marking; (7) search and rescue; and (8) anything incident to the enumerated uses, including the purchase of property both real and personal. The common limiting feature here is that all the items listed are boating related, a fact which parallels the source of the funding as boating-generated tax revenue. Unlike the county vessel funds, expenditures for land-based boating activities are proper under the WIF.

When one applies the provisions of § 57-1501 to the items enumerated in your opinion request, the items sort themselves out appropriately. Boat docks, boat ramps, and boat pumpout facilities are clearly permissible, as are restrooms, parking facilities, picnic facilities, camping facilities, and landscaping, when these items are primarily for the benefit of boaters engaging in boating activities. It would be unrealistic to expect that boaters would have the exclusive use of these facilities developed with WIF moneys. On the other hand, use of WIF moneys for the development of projects with little or no benefit to boaters would be contrary to the existing user-pay funding scheme.

The expenditure of WIF moneys on the construction and/or maintenance of roads is repugnant to the WIF funding scheme. The WIF was created

specifically because of the inequity of spending marine fuel revenues for non-marine uses. Currently, only a small percentage of gas tax revenue (less than one percent (1%) goes to the WIF) with the bulk of gas tax revenue going to roads. To spend the small proportion of gas tax revenues going to the WIF on roads would be a step back to the days before 1963 when boaters received no benefits from their boating-generated tax dollars. This result would be clearly contrary to the existing statutory scheme.

In summary, proposed expenditures of WIF moneys should be scrutinized to assure that they come within the eight permissible categories for expenditures, and that boaters engaging in boating activities will be the primary beneficiaries of the funds. Expenditures that are outside the scope of § 57-1501, or that provide no benefits or only incidental benefits to boaters are improper.

Both § 67-7013 (7) and § 57-1501 show the evolution in the funding mechanisms for the support of recreational boating programs toward a user supported system. This parallels the phenomenal growth of recreational boating activities in the state and the resultant need for increased boating facilities. The careful expenditure of funds in compliance with the statutory provisions will assure compliance with the express intent of the legislature.

AUTHORITIES CONSIDERED:

Idaho Statutes:

Idaho Code § 57-1501

Idaho Code § 63-2412

Idaho Code § 67-7013

Idaho Session Laws:

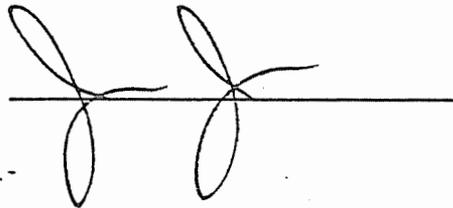
- 1949 Idaho Sess. Laws, Ch. 203, p. 423 (H.B. 154)
- 1951 Idaho Sess. Laws, Ch. 55, p. 79 (H.B. 22)
- 1961 Idaho Sess. Laws, Ch. 281, p. 499 (S.B. 233)
- 1963 Idaho Sess. Laws, Ch. 174, p. 500 (S.B. 256)
- 1969 Idaho Sess. Laws, Ch. 210, p. 611 (S.B. 1223)
- 1977 Idaho Sess. Laws, Ch. 122, p. 261 (S.B. 1183)
- 1980 Idaho Sess. Laws, Ch. 246, p. 568 (S.B. 1438)

Cases:

1. Nicolaus v. Bodine, 92 Idaho 639, 641, 448 P.2d 645, 647, (1968).
2. Webster v. Board of Trustees, 104 Idaho 342, 659 P.2d 96 (1983).

DATED this 27th day of Oct, 1989

JIM JONES
Attorney General
State of Idaho

A handwritten signature in black ink, consisting of two large, stylized loops, positioned above a horizontal line.

Analysis by:

Rinda Just
Deputy Attorney General
Idaho Department of Parks and Recreation

cc: Idaho Supreme Court
Supreme Court Library
Idaho State Library

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