



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

March 28, 1989

The Honorable Reed Hansen
Chairman
Health and Welfare Committee
STATEHOUSE MAIL

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

Re: Definition of Legislative Intent

Dear Reed:

Thank you for your letter of March 13, 1989, regarding the subject of legislative intent. In your letter you asked for clarification regarding the differences between "legislative intent as expressed in a letter from the legislature, a concurrent resolution, a concurrent resolution that amends an agency regulation, and as contained in a section of the code whether codified or not." The answer that I am providing to you takes into account the earlier response of March 9, 1989, by myself to Representative Allan-Hodge.

LEGISLATIVE LETTER OF INTENT

As I indicated in my response to Representative Allan-Hodge a legislative letter of intent is:

In general, a letter of intent [is] used as a mechanism to clarify what the legislature intended in adopting a particular statute. Generally, a letter of intent only comes into utilization by a court when the court is faced with an ambiguous statute. If there is no ambiguity and the legislature's intent is clearly stated, a letter of intent has no impact. If, however, there is ambiguity, a court may look to the letter of intent to resolve that ambiguity.

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In short, this letter-type of legislative intent is frequently placed into the journal for the purpose of clarifying a proposed statute short of actually amending the bill itself.

In your discussions you mentioned another letter-type of legislative intent, that being a letter signed by the leadership of the house and sent to a state agency indicating what the officials believed the legislature intended vis-a-vis a proposed agency action implementing a set of rules and regulations. Such a letter would essentially be an expression of a point of view of the officials who endorse the letter. Depending on which legislators signed the letter, it may have some practical impact. From a legal point of view, however, such a letter would have no binding effect.

CONCURRENT RESOLUTION

The second type of legislative intent you inquired about was a concurrent resolution that expressed the view of the legislature concerning an action of an administrative agency. A concurrent resolution expressing legislative intent and as used in this context would be an advisory expression of the legislative body to an administrative agency. It would not require an agency to take action nor would it have the force and effect of law. Rather it would place the administrative agency on notice as to what the legislature's position was regarding a particular issue. Depending upon the nature of the concurrent resolution, the state agency might very well act in accordance with the concurrent resolution. However, it would be under no legal binding obligation to do so.

CONCURRENT RESOLUTION AMENDING AN AGENCY REGULATION

This expression of legislative intent is a procedure outlined in the Idaho Administrative Procedure Act, in particular Idaho Code § 67-5218. That section, in pertinent part, provides as follows:

If the committee to which any rule shall have been referred, or any member of the legislature, shall be of the opinion that such a rule is violative of the legislative intent of the statute under which such rule was made, or if any rule previously promulgated and reviewed by the legislature shall be deemed violative of the legislative intent of the statute under which such rule is made, a concurrent resolution may be adopted rejecting, amending or modifying the same.

This section of the code purports to grant to the legislature the ability to change administrative rules through a concurrent resolution, if the legislature finds that its original grant of

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authority to the agency has not been faithfully carried out by that agency.

Our office has previously provided an attorney general's opinion on this subject. See A.G. Op. 87-6, copy enclosed. Our opinion was that this procedure was an impermissible infringement upon the Idaho Constitution and, in particular, the enactment and presentment clauses which provide the opportunity for gubernatorial review of legislative action. In short, it is our view that this procedural mechanism for expressing legislative intent will not survive a court challenge.

STATUTORY LEGISLATIVE INTENT WHETHER CODIFIED OR NOT

The final category of legislative intent is that provided for in a bill itself. This form of expression constitutes the most effective method by which the legislature can insure that its policy directives will be faithfully carried out. These expressions of legislative intent, because they are a part of a bill itself, do not suffer from any of the impediments identified above. The governor has had an opportunity to exercise his prerogative and veto the bill if the expression of legislative intent was unacceptable. The state agency is required to follow these expressions of legislative intent unless determined to be unconstitutional, and any action in derogation thereof could be challenged in a court of law.

I hope that this information is helpful. I would be happy to answer any questions you so desire.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division