



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE
(208) 334-2400

JIM JONES
ATTORNEY GENERAL

September 11, 1989

Ira Burton
Washington County Prosecuting Attorney
P.O. Box 367
Weiser, Idaho 83672

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

Re: Purchase and Remodeling of Road and Bridge Facility

Dear Ira:

You have requested an opinion from this office concerning whether the purchase and renovation of a building for use as a road and bridge facility by Washington County is an "ordinary and necessary expense" within the meaning of art. 8, § 3, of the Idaho Constitution. If the purchase and renovation is an ordinary and necessary expense, prior approval by the voters is not required by the Idaho Constitution.

A thorough analysis of the meaning of "ordinary and necessary expense" as interpreted by the Idaho Supreme Court is found in Att'y Gen. Op. No. 88-21, which states:

Recent cases construing the "ordinary and necessary" clause, therefore, do not make a simple distinction of whether the project is the construction of a new building or the repair of an old one. Rather, the court will find an expense to be "ordinary and necessary" if a governmental entity has had a long-standing involvement in a given enterprise; if the existing facilities are obsolete and in need of repair, partial replacement or reconditioning; if failure to upgrade facilities would jeopardize the

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safety of the public; and if failure to do so would create potential legal liability.

Idaho courts also have considered the amount of expense in proportion to the county's yearly revenue. Id. at 25 (citing Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870 (1984)).

You have provided us with the following information: the county has operated a Road and Bridge Department for over fifty years using a building to repair road equipment and store materials, and the current building is obsolete, inadequate, too small to get equipment into, and is either unsafe or likely to become unsafe in the near future. No firm cost has been established for the purchase and renovation of a building, but the county is seeking financing in the amount of \$200,000. The annual county budget exceeds four million dollars.

Applying the standards established by the Idaho courts and summarized in Att'y Gen. Op. 88-21, p.25: the county has a long-standing involvement in road and bridge work; existing facilities are obsolete and inadequate, and in the future may become unsafe; however, a debt of two hundred thousand dollars is a minute expense in relation to a yearly budget exceeding four million dollars. Clearly, Washington County's planned purchase and renovation of a building for use as a road and bridge facility is an "ordinary and necessary" expense within the meaning of art. 8, § 3, of the Idaho Constitution.

Sincerely,

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division