



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

TELEPHONE  
(208) 334-2400

JIM JONES  
ATTORNEY GENERAL

January 24, 1990

Senator Ralph E. Lacy  
Idaho State Senate  
Statehouse Mail

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

Re: Revenue Measure Origination  
Idaho Constitution, Article 3, Section 14

Dear Senator Lacy:

You have asked (1) whether a bill reducing existing sales or income tax rates may constitutionally originate in the Idaho State Senate; and (2) whether, in the event such legislation were declared unconstitutional, prior state tax rates would remain in effect.

The Idaho Constitution, article 3, section 14, provides:

Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives. (Emphasis added.)

Few cases in Idaho have considered this provision and its meaning. In Dumas v. Bryan, 35 Idaho 557, 207 Pac. 720 (1922), the Idaho Supreme Court considered the issue of whether levying a direct tax on all the property of the state for the purpose of providing funds for the construction of buildings at Albion Normal School constituted a revenue bill for purposes of this section. The court found that the bill, which originated in the Senate, was a revenue bill because it provided for the direct tax

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against all property of the state for general governmental purposes:

It will not do to say that this tax represents a mere incident to the main purpose of the bill, for this would be a mere evasion. Most revenue bills could in the same manner be made incidental. The amount of the tax levied is immaterial, for the constitution requires that all bills for raising revenue shall originate in the house. This is as truly a tax levied for governmental purposes as it would be if levied for the construction of a capitol building, an insane asylum, or for the support of any department of the state government, and therefore falls within the inhibition of art. 3, sec. 14, of the constitution.

Id. 35 Idaho at 566 (emphasis added).

In general, "revenue bills" refer to bills that generate revenue to meet the general expenses of government. The issue of a revenue bill which effectively decreases taxes has not been specifically addressed by the Idaho courts. The majority of other courts addressing the issue have, however, construed "raising revenue" in similar constitutional provisions to include those bills that have the effect of reducing revenue. In Weisinger v. Boswell, 330 F.Supp. 615 (M.D.Ala. 1971), for example, the federal district court construed language of the Alabama Constitution virtually identical to that of the Idaho Constitution. The court concluded:

In Alabama, any bill whose chief purpose is to create revenue or to increase or decrease revenue is one to "raise revenue" and must originate in the House of Representatives. Opinion of the Justices, 238 Ala. 289, 290, 190 So. 832 (1939).

330 F.Supp. at 624 (emphasis added).

While there is authority to the contrary, it is likely that the Idaho court would adopt the same construction of the Idaho Constitution because the language is so similar to the Alabama constitutional provision. We conclude that a bill which imposes a sales or income tax, albeit at a rate reduced from existing law, does fall within the restriction of article 3, section 14 of the Idaho Constitution and, therefore, must be introduced in the House of Representatives.

The general rule regarding the effect of declaring a state statute unconstitutional has been stated as follows: "The

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elementary rule of statutory construction is without exception that a void act cannot operate to repeal a valid existing statute, and the law remains in full force and operation as if the repeal had never been attempted." Conlon v. Adamski, 77 F. 2d 397, 399 (D.C. Cir. 1935).

Thus, if a bill to change the income or sales tax rates is introduced in the Senate and later declared unconstitutional because it did not originate in the House of Representatives, the effect would be to reinstate the prior state statute on the same subject which had been replaced. Therefore, prior state tax rates would remain in effect.

Sincerely,

*Daniel G. Chadwick*

DANIEL G. CHADWICK  
Deputy Attorney General

DGC/dp

cc Honorable Rachel Gilbert  
Honorable Michael D. Crapo  
Honorable Tom Boyd  
Honorable Steve Antone