

November 28, 1990

The Honorable Kathleen W. Gurnsey, Chairman  
House Appropriations Committee  
1111 W. Highland View Drive  
Boise, ID 83702

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

Re: Transfer of \$40,000 to the Idaho State Racing Commission

Dear Representative Gurnsey:

This is in response to your questions regarding a recent transfer of \$40,000 from the department of law enforcement to the Idaho State Racing Commission. I understand that in late September, after the departure of the former executive director of the racing commission, the commission discovered that it had insufficient funds currently available to pay its bills and its payroll. The problem was brought to the attention of the division of financial management (DFM). DFM worked with the commission to establish a budget which would keep the expenditures of the commission within its revenue for the fiscal year. However, a substantial part of the commission's revenue will not be received until later in the fiscal year. Revenue received to date is not sufficient to pay bills outstanding.

To solve the current cash flow problem for the racing commission, DFM worked with the department of law enforcement to provide a transfer of \$40,000 from the department of law enforcement to the commission, with reimbursement to be made before the end of the fiscal year. The mechanism chosen was Idaho Code § 67-3511, which is commonly used to make transfers between programs of an agency. In particular, Idaho Code § 67-3511(2) provides:

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Appropriations may be transferred from one program to another within a budgeted agency, as appropriated, upon application duly made by the head of any department, office or institution of the state (including the elective officers in the executive department and the state board of education) and approval of the application by the administrator of the division of financial management and the board of examiners provided the requested transfer is not more than ten percent (10%) cumulative change from the appropriated program amount. Requests for transfers above ten percent (10%) cumulative change must, in addition to the above, be approved by law.

Thus, Idaho Code § 67-3511 provides a procedure for transfer of appropriations between programs of a budgeted agency. Chapter 261, 1990 Session Laws, provides an appropriation to the department of law enforcement. The racing commission is a program within the department of law enforcement appropriation designated to receive \$637,200. Thus, DFM authorized the transfer of \$40,000 to the racing commission pursuant to Idaho Code § 67-3511. It was intended that a reimbursement occur toward the end of the fiscal year once the racing commission had received sufficient revenues to make the reimbursement.

In your letter, you have pointed out that Idaho Code § 54-2514 provides, in pertinent part:

All sums due the commission from the licensee shall be paid to and retained by the commission for the payment of salaries, travel, operating costs and other expenses necessary to carry out the provisions of this act, except that no payment need be made for office accommodations furnished by the state: provided, however, that no salary, wages, expenses or compensation of any kind shall be paid by the state of Idaho for, or in connection with, the work of the commission in carrying out the provisions of this act.

Though somewhat unclear, the above-quoted language indicates that the commission is to be self-supporting from its license revenues with the exception that the state may pay for office accommodations from other state revenues. In light of this provision, you have asked if the general procedure for transfer of appropriations provided by Idaho Code § 67-3511 should be used since the transfer includes general fund revenues. If not repaid, the general fund would end up supporting the racing commission.

As discussed below, we recommend the use of the registered warrant procedures of § 67-1212 to handle the cash flow problems of the racing commission. The problem which we see in using the procedures of § 67-3511 is that transfers made pursuant to that section do not require repayment. Thus, if for some reason the general account were not later reimbursed, the provisions of Idaho Code § 54-2514 regarding the self-supporting nature of the racing commission would be violated.

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In our opinion, it is preferable to use the registered warrant provisions of § 67-1212 in these circumstances. Idaho Code § 67-1212(1) provides, in pertinent part:

All warrants upon funds the balance in which is insufficient to pay them must be turned over to the state treasurer by the state auditor. All of such warrants shall be registered by the state treasurer as follows: he shall date and sign such warrants on the back thereof underneath the words "Presented for payment and not paid for want of monies" and return the same to the state auditor for delivery to the respective payees. . . . Any such warrants, registered by the state treasurer, shall from date of registration until paid bear interest at a rate to be fixed by the state treasurer.

Thus, the registered warrant procedure provides a mechanism for the operation of government when the cash balance in a fund is currently insufficient to pay current obligations. The procedure creates a legal obligation to pay the amount of the registered warrant plus interest. Registered warrants are legal investments of the State of Idaho which may be purchased with general account funds pursuant to § 67-1210(g), Idaho Code.

The registered warrant procedure has not been used in recent years by the state because revenue anticipation notes and appropriation transfers pursuant to Idaho Code § 67-3511 are typically more efficient. However, the use of registered warrant procedures in this case would avoid any possibility of violating Idaho Code § 54-2514.

The registered warrant procedure could be used in this case to provide the racing commission the cash flow required to operate within its appropriation while maintaining the obligation to repay the general account with interest. The procedure would not result in a violation of the provisions of Idaho Code § 54-2514, regarding the self-supporting nature of the racing commission. By use of the registered warrant procedure, the general account would merely be making a legal investment in a registered warrant of the racing commission.

The procedure could work in this case as follows: The racing commission could request a warrant to be drawn payable to the department of law enforcement to reimburse the department for the funds which were transferred to the racing commission. The warrant could be registered by the state treasurer and the treasurer could establish an interest rate based upon her estimate of the interest rate which could be received by the general account from alternative investments. By receiving an equivalent interest rate, the general account would not lose interest revenue due to the transfer of funds. The department of law enforcement would hold the registered warrant until it was repaid by the racing commission.

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If you have any questions regarding this letter, please give me a call.

Sincerely,

David G. High  
Deputy Attorney General  
Chief, Business Regulation  
and State Finance Division