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January 11, 1990

Honorable Stan Hawkins
State Representative, District 33
House of Representatives
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 Representative Hawkins:

In your letter of December 5, 1989, you ask whether county finance measures enacted by the Legislature must originate in the House of Representatives. Idaho Constitution, article 3, section 14, provides as follows:

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 against all property of the state for general governmental purposes:

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Honorable Stan Hawkins
January 11, 1990
Page two

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.

In State ex rel. Parsons v. Workmen's Compensation Exchange, 59 Idaho 256, 81 P.2d 1101 (1938), the supreme court found that the requirement that employers pay to the state the sum of \$1000.00 on the death of an employee where no dependents existed did not constitute revenue for the purposes of this section. Rather, the court found this payment to be "compensation" as opposed to a license fee, excise tax, or any other tax. 59 Idaho at 260. Thus, the bill creating this provision properly was initiated in the Senate.

Finally, in Worthen v. State, 96 Idaho 175, 525 P.2d 957 (1974), the supreme court held that article 3, section 14, does not prohibit the Senate from amending a revenue measure properly started in the House of Representatives. However, the Idaho courts have never addressed the question of whether a bill granting counties or any other local governments the authority to tax local property or citizens for the support of local government is a revenue bill requiring initiation in the House of Representatives.

Other jurisdictions which have addressed this question have unanimously held that such bills are not revenue bills and thus may be initiated in either body. For example, in Evers v. Hudson, 92 Pac. 462 (Mont. 1907), the Montana Supreme Court upheld the enactment of a bill initiated in the Montana Senate which provided for a local property tax for the support of a local high school. The court stated:

Honorable Stan Hawkins
January 11, 1990
Page three

In any event, the tax is only upon the property of the county, and the funds to be raised belong exclusively to the particular school for which they are raised. No part of the funds can by any possible means find its way into the state treasury, and the provisions of this section of the Constitution clearly refer to revenues of the state.

92 Pac. at 466. The court cited favorably from Rankin v. City of Henderson, 7 S.W. 174 (Ky. 1888), where the Kentucky courts specifically found that this type of constitutional provision does not apply to situations which delegate taxing authority to local government merely for the maintenance of that local government. See also Fletcher v. Oliver, 25 Ark. 289 (1868), and Annot., "Application of Constitutional Requirement that Bills for Raising Revenue Originate in Lower House," 4 A.L.R. 2d 973 (1948).

In Dickey v. State, 217 Pac. 145 (Okla. 1923), the Oklahoma Supreme Court stated:

In our opinion, the constitutional provision referred to has reference to bills for raising revenue to meet the expense of the state government and has no reference to bills which authorize a municipal subdivision of the state to raise revenue for defraying the expense of such municipality. While the bill authorizes the municipal subdivision of the state to levy tax for a particular purpose, yet it does not raise revenue, and the revenue is not raised until the municipality exercises authority granted by the bill, hence the constitutional provision referred to has no application.

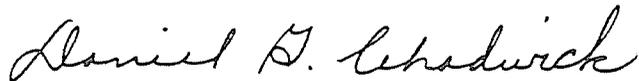
217 Pac. at 146.

Based on the foregoing decisions, it is our opinion that legislative measures granting taxing authority to local government entities, such as counties, cities and school districts, are not revenue measures that come within the purview of article 3, section 14, and thus, may be initiated in either the Senate or House of Representatives. See 1986 Attorney General's Opinions and Annual Report 145-149.

Honorable Stan Hawkins
January 11, 1990
Page four

If you have additional questions, please do not hesitate to contact me.

Sincerely,



DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division

DGC/dp

cc: Honorable Tom Boyd
Honorable Mike Crapo
Honorable Steve Antone
Honorable Rachel Gilbert