

STATE OF IDAHO

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January 18, 1990

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

Re: Seizure of Vehicle Registration Cards and License
Plates

Dear Mr. Fawcett:

You have presented the following questions:

Do officers have the duty to seize and immediately surrender to the Idaho Transportation Department the registration cards and the license plates of vehicles operated without liability insurance and does the Idaho Transportation Department have the duty to accept, such registration cards and license plates from the officers?

It is my understanding that Boise police officers have been seizing and immediately surrendering vehicle registration cards and license plates to the Idaho Department of Transportation based on Idaho Code §§ 49-1230 and 1232. The Idaho Department of Transportation has refused to accept the confiscated vehicle registration cards and license plates, based on its opinion that the statutes do not authorize seizure or confiscation. Finally, you represent that the practice of seizing vehicle registration cards and license plates effectively guarantees that uninsured

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W. H. Fawcett
January 18, 1990
Page two

vehicles are not driven after the driver is cited for no insurance.

The statutes in question are not ambiguous. Idaho Code § 49-1229 requires the owner of a motor vehicle registered and operated in Idaho to maintain liability insurance. A person must certify the existence of the required liability insurance before registering the motor vehicle. Idaho Code § 49-1230. Idaho Code § 49-1230 further provides in part:

An owner of a motor vehicle who ceases to maintain the insurance required in accordance with this chapter shall immediately surrender the registration card and license plates for the vehicle to the department and may not operate or permit operation of the vehicle in Idaho until insurance has again been furnished as required in accordance with this chapter and the vehicle is again registered and licensed. (Emphasis added.)

Finally, the operator of every motor vehicle must have in his or her possession a certificate or proof of liability insurance which must be provided for inspection to any peace officer upon request. Idaho Code § 49-1232. However, no person may be convicted of a violation of Idaho Code § 49-1232 if he or she produces the required certificate or proof of liability insurance at any time prior to conviction.

In the absence of any ambiguity, the words of a statute must be given their plain, usual and ordinary meaning. Walker v. Hensley Trucking, 107 Idaho 572, 691 P.2d 1187 (1984). Where a statute is clear and unambiguous, the expressed legislative intent must be given effect. Intermountain Health Care, Inc. v. Board of County Commissioners of Madison County, 109 Idaho 685, 710 P.2d 595 (1985). Additionally, criminal statutes are strictly construed in both their substantive elements and in their sanctions. State v. McKaughen, 108 Idaho 471, 700 P.2d 93 (Ct. App. 1985). The statutes in question are clear and unambiguous; therefore, the statutes' expressed intent must be given effect.

Neither Idaho Code § 49-1230 nor § 49-1232 supports the seizure of a vehicle's registration card and license plates by a peace officer. Idaho Code § 49-1230 requires a motor vehicle owner who ceases to maintain the required liability insurance to "immediately surrender the registration card and license plates for the vehicle to the Department..." The clear intent of the statute is that a motor vehicle owner has the duty to yield the possession of the vehicle registration card and license plates to

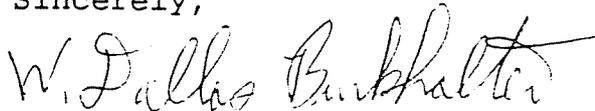
W. H. Fawcett
January 18, 1990
Page three

the Idaho Department of Transportation if and when the owner ceases to maintain the required liability insurance. Idaho Code § 49-1230 does not authorize seizure or confiscation of registration cards or license plates, and clearly does not impose a duty on or authorize peace officers to take any such action. The motor vehicle owner, not the police officer, is the one directed to surrender the registration card and license plate.

Idaho Code § 49-1232 likewise provides no authority to seize or confiscate registration cards and license plates. That statute prevents conviction if proof of insurance is provided at any time prior to conviction. Thus, the statute expressly envisions situations in which a driver lacking proof of insurance at the time of the stop may nonetheless be insured, and provides a mechanism for curing the defect of failing to carry the certificate.

Based on Idaho Code §§ 49-1230 and 49-1232, the answer to each of your questions is "No." The adoption of a policy of seizing motor vehicle registration cards and license plates of uninsured vehicles would require a statutory change. A model for such change can be found in Idaho Code § 49-1222, which specifically authorizes a peace officer to secure a person's operator's or chauffeur's license at the direction of the Idaho Department of Transportation, when the license has been suspended. The fact that no similar express authority to confiscate registration cards and license plates is found in Idaho Code §§ 49-1230 or 49-1232 is a clear indication that the legislature has not yet chosen to adopt such a policy.

Sincerely,



W. DALLAS BURKHALTER
Deputy Attorney General

WDB/dp

cc Herb Kinney
Steve Parry