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The Honorable John D. Hansen  
Idaho State Senate  
STATEHOUSE MAIL

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

Re: Constitutionality of a Budget Reserve Account

Dear Senator Hansen:

This is in response to your question regarding the constitutionality of S.B. 1573, which would appropriate funds to a budget reserve account. You have asked if the creation of a budget reserve account would result in a violation of Idaho Constitution art. 7, § 2, which provides, in part, "the legislature shall provide such revenue as may be needful, by levying a tax. . . ." The language of the section raises the question whether the accumulation of a surplus implies that the legislature has exceeded its authority on grounds that the surplus revenue is not "needful."

The Idaho Supreme Court considered this question in the early case of Fenton v. Board of County Commissioners, 20 Idaho 392, 119 P. 41 (1911). The case involved a state statute which provided funding for the public schools. The statute required the boards of county commissioners of each county to levy a tax of not less than five mills nor more than ten mills on each dollar of taxable property for school purposes. Ada County determined that a 3 mill levy was sufficient to support the schools and levied that amount. In the companion case, Dart v.

Board of County Commissioners, 20 Idaho 445, 119 P. 52 (1911), the Kootenai County Commissioners had levied 2.45 mills for public school purposes. The 3 mill levy in Ada County was sufficient to raise one and one-half times as much money for school purposes as had been raised the prior year. 20 Idaho at 416. It was also asserted that some school districts had enough money left in their treasury to maintain their schools without the use of any levy for the year. 20 Idaho at 417. Thus, the question was raised whether the legislature could require a tax in excess of the amount needful for the purpose for which it was levied. The court referred to:

section 2 of article 7 of the constitution, which reads in part as follows: "The legislature shall provide such revenue as may be needful by levying a tax by valuation," etc. Counsel contend that said section is a restriction on the power of the legislature, and that the legislature cannot levy or authorize the levy of any tax in an amount in excess of what is "needful" or necessary for the purpose for which it is levied, and an attempt to authorize an excessive levy is contrary to said provision of the constitution and void.

20 Idaho at 398-399.

The court acknowledged that the levy would raise more money than many of the districts would need, and characterized this as "unfortunate," but went on to state that it was not for the court to attempt to deprive the legislature of any power or authority given to it by the constitution. 20 Idaho at 405. The court stated:

It is a familiar and fundamental principle of construction applicable to state constitutions that the legislature of the state has plenary power in regard to all matters of legislation that belongs to or resides in the people, except when restricted by express provisions or necessary implications in the constitution of the state and of the United States. 20 Idaho at 406. The court then held as follows:

We find no inhibition in our constitution against such legislation, and we find nothing in the constitution prohibiting the legislature from fixing a maximum and minimum amount between which such tax may be levied. The legislature has full power and authority to enact said sec. 65, and it is not repugnant to any provision of the constitution, and is mandatory. 20 Idaho at 407.

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Thus, the court determined that the provision of Idaho Constitution art. 7, § 2, providing that the legislature shall provide such revenue as may be "needful" does not limit the legislature's authority to impose taxes which result in a surplus.

It should also be noted that Idaho Constitution art. 7, § 2, deals only with property taxes, license taxes and per capita taxes according to its terms. Diefendorf v. Gallet, 51 Idaho 619, 636-637, 10 P.2d 307 (1932). Thus, it would be even more difficult to make an argument today that the legislature could not create a surplus since the majority of the state's revenue does not come from the sources arguably limited. Idaho Const. art 7, § 2.

In reviewing the question you raised, we also considered it significant that the provisions relating to counties and those relating to the state differ substantially. Idaho Constitution art. 7, § 15, requires counties to operate on a cash basis and requires surpluses at the end of each county fiscal year to be transferred to the county warrant redemption fund. In other words, the constitutional framers restricted the use of surplus funds by counties. They provided no similar limitation with respect to the state.

We also reviewed the proceedings of the Idaho Constitutional Convention regarding these two sections. There was substantial debate on the question whether counties should be constitutionally restricted with respect to surplus funds. See, e.g., Proceedings and Debates of the Constitutional Convention of Idaho, pp.1687-1691. In contrast, there was no such debate with respect to state finances.

In conclusion, it is our opinion Idaho Constitution art. 7, § 2, does not prohibit the state from creating a reserve fund to be used at a later date.

Sincerely,

DAVID G. HIGH  
Deputy Attorney General  
Chief, Business Regulation  
and State Finance Division