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

Gentlemen:

You have requested an opinion from this office regarding the apportionment of fines and forfeitures pursuant to I.C. § 19-4705. I.C. § 19-4705 provides for the apportionment and distribution of all fines and forfeitures "collected pursuant to the judgment of any court of the state." For instance, I.C. § 19-4705(b) provides for the apportionment of fines and forfeitures remitted as a result of convictions for violations of fish and game laws. I.C. § 19-4705(c) provides for the apportionment of fines and forfeitures remitted for violations of state motor vehicle laws, state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances. Where an arrest is made or citation issued by a city law enforcement officer the city receives ninety percent (90%) of the money collected. The apportionment of these funds pursuant to I.C. § 19-4705(c) is not in dispute.

The question involves the interpretation of I.C. § 19-4705(d) and § 19-4705(f). These subsections apportion fines and

J. D. Hancock
Dale P. Thompson
April 5, 1991
Page 2

forfeitures for non-motor vehicles and non-fish and game law violations. These subsections provide:

(d) Fines and forfeitures remitted for violation of any state law not involving fish and games laws, or motor vehicle laws, or state driving privilege laws, or state laws prohibiting driving while under the influence of alcohol, drugs or any other intoxicating substances, shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (90%) to the district court fund of the county in which the violation occurred.

. . . .

(f) Fines and forfeitures remitted for violation of city ordinances shall be apportioned ten per cent (10%) to the state treasurer for deposit in the state general account and ninety per cent (90%) to the city whose ordinance was violated.

The City of Rexburg has incorporated by ordinance the state criminal code, title 18, Idaho Code. As such the city claims that pursuant to I.C. § 19-4705(f) the city is entitled to 90% of all fines and forfeitures remitted for all misdemeanor violations such as petty theft, disturbing the peace, assault and battery, etc. when charged by a city law enforcement officer as violations of the city's ordinances. Madison County asserts to the contrary that misdemeanor violations adopted from the state criminal code are properly classified as violations of state law and that 90% of the resulting fines and forfeitures must be remitted to the district court fund pursuant to I.C. § 19-4705(d).

The first question we must address is whether a city has the authority to enact prohibitory ordinances of the type listed above or whether the state has preempted a city's authority by enacting the criminal code. For the reasons set forth below, this office concludes that cities do have the authority to enact misdemeanor criminal ordinances and the state has not preempted this authority by enacting the state criminal code.

Idaho cities have a direct grant of police power under art. 12, § 2, of the Idaho Constitution:

Any county or incorporated city or town may make and enforce, within its limits, all such local police,

J. D. Hancock
Dale P. Thompson
April 5, 1991
Page 3

sanitary and other regulations as are not in conflict with its charter or with the general laws.

This grant of authority, however, is not unlimited and if a city ordinance conflicts with the general laws of the state, the ordinance is invalid. In re Ridenbaugh, 5 Idaho 371, 49 P. 12 (1897).

The Idaho Legislature has expressly accorded concurrent jurisdiction to municipalities in regard to misdemeanor criminal violations. I.C. § 50-302(1) provides:

Cities shall make all such ordinances, by-laws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry. Cities may enforce all ordinances by fine or incarceration; provided, however, except as provided in subsection (2) of this section, that the maximum punishment of any offense shall be by fine of not more than three hundred dollars (\$300) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

Further, the fact that the state has enacted similar prohibitory provisions does not divest municipalities from this authority to regulate local affairs. In State v. Preston, 4 Idaho 215, 30 P. 694 (1894), the defendant was convicted of violating the city of Pocatello's vagrancy ordinance. The defendant challenged the validity of the ordinance on the basis that the conduct was punishable under state law and the city had no authority to criminalize such conduct in light of the state law. The Idaho Supreme Court rejected the defendant's argument and held that the city had the authority to enact and enforce criminal ordinances notwithstanding existing state laws prohibiting the same conduct.

Similarly, in State v. Quong, 8 Idaho 191, 67 P. 491 (1902), the defendant was convicted of battery under a Boise city ordinance and challenged the validity of the ordinance as being contrary to state law. The Idaho Supreme Court rejected this argument and stated:

We cannot sanction this contention. The ordinance is not in conflict, but in harmony, with the general law.

The authority of the city to enact police regulations, and to enforce them, where they do not contravene any general law of the state, is, under the provisions of our constitution, beyond question. The municipal government may not take from the citizen any constitutional right -- has no power to do so -- yet by the express provisions of section 2, article 12, the power to make and enforce sanitary and police regulations is expressly given to cities and towns. The object of the provision is apparent, its necessity urgent. The burden of policing the different cities should not be thrown upon the state, nor upon the county in which the particular city in question may be situated. A prompt and efficient police service is absolutely necessary to a well-regulated and conducted city.

8 Idaho at 194, 195 (emphasis added).

In State v. Poynter, 70 Idaho 438, 220 P.2d 386 (1950), the Idaho Supreme Court addressed the issue again and stated:

The state and a municipal corporation may have concurrent jurisdiction over the same subject matter and in which event the municipality may make regulations on the subject notwithstanding the existence of state regulations thereon, provided the regulations or laws are not in conflict.

The mere fact that the state has legislated on a subject does not necessarily deprive a city of the power to deal with the subject by ordinance.

A municipal corporation may exercise police power on the subjects connected with municipal concerns, which are also proper for state legislation. (Citations omitted.)

.....
Whatever the rule may be elsewhere, it has long been the rule in Idaho that the fact that an ordinance covers the same offense as the state law does not make it inconsistent or in conflict therewith, or invalid for that reason.

J. D. Hancock
Dale P. Thompson
April 5, 1991
Page 5

70 Idaho at 441, 446. See also State v. Musser, 67 Idaho 214, 176 P.2d 99 (1946). Thus, it is beyond question that Idaho cities are empowered to enact similar or identical criminal ordinances to state law and share concurrent jurisdiction in the field.

Based upon the express grant of authority to regulate local affairs given to municipalities in art. 12, § 2, of the Idaho Constitution and by the Idaho Legislature in I.C. § 50-302, the city of Rexburg is empowered to enact ordinances prohibiting certain conduct and to prescribe penalties therefor. This authority is limited to misdemeanor offenses. The city cannot enact ordinances prescribing penalties for felonies as defined under state law. State v. Poynter, supra.

Madison County notes that the citations issued by the Rexburg city police generally reference the section of the Idaho Code violated without citing a specific Rexburg city ordinance. This office has found no authority that would prohibit a city from adopting the state criminal code and incorporating the provisions by reference. To the contrary, in Town of Republic v. Brown, 652 P.2d 955 (Wash. 1982), it was noted that the town of Republic, Washington, had adopted the state motor vehicle code by reference and the defendant was charged for violating a city ordinance as cited to the Revised Code of Washington. This reference to the Revised Code of Washington did not alter the nature of the ordinance or charged offense. The infraction was viewed as a violation of a city ordinance. From a practical standpoint no purpose would be served by requiring a city to renumber its ordinances.

We come, then, to the central question you have raised, namely, whether fines and forfeitures remitted for violations of city ordinances, which would otherwise be misdemeanors under the state criminal code, belong 90% to the city (as contended by the city of Rexburg) or 90% to the county's district court fund (as contended by Madison County). We conclude the fines and forfeitures must be apportioned to the city.

It has been suggested that the legislative intent in enacting I.C. § 19-4705 was to the contrary. The argument is that the distribution scheme in the subsections of the statute progressively addresses (b) fish and game violations; (c) motor vehicle violations; (d) other state law violations; (e) county ordinance violations; (f) city ordinance violations; and (g) all other violations. The distribution scheme thus seems calculated to descend from the higher to the lower units of government.

Under this reading, it could be argued that the legislature did not intend to permit cities to evade the normal distribution scheme and receive a disproportionate share of funding for violations of state criminal laws by merely enacting identical criminal ordinances.

This argument is certainly a plausible interpretation of the legislature's intent. It suffers, however, from two weaknesses. First, the statute is clear and unambiguous and does not require constructive interpretation in an effort to discern legislative intent. See Moon v. Investment Board, 97 Idaho 595, 548 P.2d 861 (1976). Subsection (f) of I.C. § 19-4705 clearly states that "[f]ines and forfeitures remitted for violation of city ordinances shall be apportioned . . . ninety per cent (90%) to the city whose ordinance was violated." The language is so clear it cannot be evaded.

Second, the history of this statute demonstrates that the language must be taken literally. Subsection (c) of the statute provides a complex distribution formula for violations of certain state motor vehicle laws. However, the statute was amended in 1971 to provide that 90% of such fines and forfeitures shall be apportioned to the city if the arrest on such violations is made by a city law enforcement official. We are informed by those familiar with the history of this amendment that this formula was added precisely because cities were, in fact, adopting the state motor vehicle code as a city ordinance and claiming the fines and forfeitures under the subsection (f) distribution language. It is apparent that history is now repeating itself, with cities adopting the state misdemeanor criminal code as a city ordinance. Once a city does so, it is entitled to the fines and forfeitures collected for violations of the new city ordinance under the clear language of subsection (f). This may not have been the result contemplated by the legislature in enacting I.C. § 19-4705, but it is for the legislature to correct the statute if it chooses to reverse the outcome mandated by the clear language of the statute.

Finally, we stress that this interpretation of I.C. § 19-4705(f) does not reach an absurd result from a policy point of view. Under I.C. § 50-302(A) the city must pay the costs of confinement of any person charged with or convicted of a violation of a city ordinance. The city must pay these charges regardless of whether the violator is confined in a city jail or a county jail. See County of Bannock v. City of Pocatello, 110 Idaho 292, 715 P.2d 962 (1986). Thus, there is logic to the conclusion that cities are entitled to their share of the fines

J. D. Hancock
Dale P. Thompson
April 5, 1991
Page 7

and forfeitures for violations of city ordinances in order to defray the costs of jailing those who have violated such ordinances.

Yours very truly,



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Deputy Attorney General

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