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May 22, 1991

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Daniel G. Chadwick
Idaho Association of Counties
700 W. Washington
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RE: Effective Date Of House Bill 352

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

Dear Mr. Chadwick:

You have requested an opinion from this office regarding House Bill 352. This bill was passed by the Idaho Legislature during the 1991 legislative session and signed by Governor Andrus. This legislation adds a new chapter to the Idaho Code, Chapter 65, Title 39, and is intended to ensure the proper disposal of waste (used) tires.

Beginning July, 1, 1991, the new law imposes a one dollar (\$1.00) tax for every new tire sold in Idaho. The revenue generated by this tax is to be placed into a "waste tire grant account." The funds accumulated in this account are then to be used to reimburse persons or entities that purchase and utilize waste tires in the manner prescribed in I.C. § 39-6504(3). The legislature's express intent in devising this revenue distribution program was "to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials." I.C. § 39-6505.

With this economic incentive for the development of waste tire disposal centers is a provision prohibiting landfills from accepting waste tires for disposal. I.C. § 39-6504. Similarly, beginning in 1993, a person can dispose of waste tires only at a waste tire collection site or in a statutorily prescribed manner.

A question has arisen over the effective date of I.C.

§ 39-6504(1) and the landfill/waste tire prohibition. Idaho Code § 39-6504 states in part:

(1) The disposal of waste tires in landfills and the incineration of those tires is prohibited, except as provided in subsection (3) of this section or in accordance with rules and regulations of the department of health and welfare. An owner and operator of a solid waste disposal site shall not knowingly accept waste tires for disposal.

(2) Beginning on January 1, 1993, a person shall not dispose of waste tires unless the waste tires are disposed of at a waste tire collection site or as provided in subsection (3) of this section in accordance with rules and regulations of the division of environmental quality of the department of health and welfare.

The stated effective date for HB 352 is July 1, 1991. Thus, if construed literally, I.C. § 39-6504(1) will take effect in July, 1991, and landfills will no longer be able to accept waste tires. The difficulty with this prohibition is that currently there are few waste tire collection centers in the state. It has been suggested that the effective date for I.C. § 39-6504(1) was intended to be January 1, 1993, the same as stated in subsection (2).

Taking into consideration the July 1, 1991, effective date stated in HB 352, it is clear that I.C. § 39-6504(1) and (2) are patently inconsistent. Public landfills are prohibited from accepting waste tires after July 1, 1991, yet the general public is not required to begin using waste tire collection centers until January 1, 1993. There is a one and one half (1½) year gap where waste tire disposal is left in limbo and dependent upon the rapid development of waste tire collection centers throughout the state. The practical impact of I.C. § 39-6504(1) is that the public will not be able to or will have difficulty in disposing of waste tires.

The legislative history of HB 352 is helpful in resolving this inconsistency and may be resorted to in aiding its construction. Liefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983); Mix v. Gem Investors, 103 Idaho 355, 647 P.2d 811 (Idaho App. 1982). Representative Deanna Vickers co-sponsored HB 352 in the Idaho House of Representatives. After passing in the House, HB 352 was sent to the Health and Welfare Committee in the Senate. Representative Vickers testified in

favor of the bill before that committee. The committee minutes reflect her testimony:

She [Representative Vickers] stated that this legislation sets up a fee of \$1.00 per tire to become effective July 1, 1991. In July, 1991, monies would become available for rebates and in January 1993, the prohibition begins for dumping tires in landfills. (Emphasis added. Senate Health and Welfare Committee minutes - March 27, 1991.)

This office has also spoken with Representative Mark Stubbs who co-sponsored HB 352 with Representative Vickers in the House. Although this discussion has no technical legal effect, his observations on the subject re-enforce Representative Vickers' testimony. Representative Stubbs' understanding in sponsoring the legislation was that the effective date for I.C. § 39-6504(1) was January 1, 1993, and that an error was made in revising the legislation prior to its introduction. He feels the 1993 effective date for the landfill prohibition was the common understanding of the legislature in passing HB 352.

In addition to the legislative history of HB 352, construing the legislation as a whole indicates an intent other than the literal effective date of July 1, 1991, with respect to landfills and I.C. § 39-6504(1). The Idaho Supreme Court in Keenan v. Price, 68 Idaho 423, 438, 195 p.2d 662 (1948), set forth the following rules aiding statutory construction:

All statutes must be liberally construed with a view to accomplishing their aims and purposes, and attaining substantial justice, and the courts are not limited to the mere letter of the law, but may look behind the letter to determine its purpose and effect, the object being to determine what the legislature intended, and to give effect to that intent. (Citations omitted.)

"It is the duty of courts to execute laws according to their true intent and meaning; and that intent, when collected from the whole and every part of the statute taken together, must prevail even over the literal sense of the terms and control the strict letter of the law, when the letter would lead to possible injustice, contradiction, and absurdity. * * * In the construction of a statute it is an invariable rule to start out with the assumption that some effect is to be given, if possible, to every provision of the

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statute." (Emphasis added). Chandler v. Lee, 1 Idaho 349, at page 351.

"* * * It is not our business as a court to deal in any subtle refinements in construing legislative acts, but it is rather our duty to ascertain, if possible, from a reading of the whole act the purpose and intent of the Legislature and give force and effect thereto." (Emphasis added). Swain v. Fritchman, 21 Idaho 783, at page 795, 125 P. 319, 323.

Thus, when construing the act as a whole and gaining a sense of the overall scheme of the legislation, it is apparent that the landfill prohibition provision was not intended to become effective this July. The imposition of the \$1.00 per new tire sold tax and creation of the waste tire grant account is to promote the development of waste tire disposal centers and to enhance the markets for waste tire materials. The legislation obviously recognizes and is designed to rectify a current shortage in this area. Otherwise there would be no need for economic incentives. It makes little sense that the legislature intended to aggravate the problem by closing landfills to waste tire disposal this July. It is more logical that the legislature intended that the development of waste tire collection centers over the next four years -- the statutory life of the waste tire grant account -- would correspond with the eventual close of landfills to used tires.

Given the express intent of the co-sponsors in presenting HB 352 and the impracticalities of I.C. § 39-6504(1) as written, it is the conclusion of this office that I.C. § 39-6504(1) was intended to go into effect on January 1, 1993, instead of July 1, 1991.

Yours very truly,



FRANCIS P. WALKER
Deputy Attorney General

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