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

Re: No Conflict Between PUC Carrier Regulations And Idaho Code

Dear Lynn:

The attorney general has asked me to respond to your letter of May 9, 1991, regarding an apparent conflict between sections of the Idaho Code. You have noted that Idaho Code § 49-905 makes it an infraction to drive without both headlights in operation. This has been the law since 1982. You have also pointed out that the Idaho Public Utilities Commission has made the same act, when performed by a carrier, a misdemeanor by the adoption of the motor carrier safety regulations of the Code of Federal Regulations, under the authority to make rules conferred upon the PUC by the legislature in Idaho Code § 61-807. Idaho Code § 61-814 makes it a misdemeanor to violate those rules. These statutes have been in effect since 1929.

In order to resolve this issue, it is helpful to begin by considering general rules of statutory construction. It is presumed that when the legislature enacts a statute it consults earlier statutes on the same subject matter. State v. Long, 91 Idaho 436, 423 P.2d 858 (1967). A cardinal principle of statutory construction is to ascertain legislative intent. Messenger v. Burns, 86 Idaho 26, 382 P.2d 412 (1963). Such intent may be inferred from policy or reasonableness. Summers v.

Dooley, 94 Idaho 87, 481 P.2d 318 (1971). Statutes should be interpreted in such a way as to save them from nullification. Bel v. Benewah County, 60 Idaho 791, 97 P.2d 397 (1940).

In accordance with these policies, it is my interpretation that the statutes in question do not conflict. Rather, it appears that the legislature chose to regulate 18-wheelers more stringently than the family car. When headlight violations were reduced from misdemeanors to infractions in 1982, the legislature chose not to extend this largesse to carriers.

A similar issue was raised sixty years ago. In re Public Utilities Commission, 51 Idaho 56, 1 P.2d 627 (1931). In that case, two trucking companies challenged PUC regulations pertaining to length and width requirements of commercial trucks. The claim was that the regulations conflicted with statutes regulating the maximum height and weight of "vehicles." The court stated:

[R]egulating a common carrier business upon the highways is considered quite different from ordinary policing. It is derived from a a different source. The policing power deals with rights of the public in the road and is restricted to regulatory supervision differing from a commission's supervision of a common carrier business which the state permits upon the road. In the supervision of such business it is held the power is plenary and may extend even to exclusion because the regulation of the business is the regulation of a privilege permitted and controlled by the state.

And, it is quite generally held that the business of a common carrier of freight or passengers permitted upon the highways is regulatory independently of any police power supervising the ordinary and usual rights of citizens in the highway, and independent of the ordinary laws establishing rules of the road governing ordinary rights in and upon the highway.

51 Idaho at 61-62.

In other words, regulation of carrier safety is independent of, and treated differently from, regulation of standard traffic

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safety. Hence, there can be no conflict between the PUC regulations and Idaho Code § 49-905.

Yet another way to regard the issue is to consider that the legislature and the PUC have created a different crime from that contemplated in § 49-905. While the statute covers all vehicles without regard to type or size, the regulation covers the driving without a headlight by a carrier as defined by the regulations. In order to prove a misdemeanor, a prosecutor would have to show not only that a person was driving with a light out, but also that the person meets the criteria in the regulations defining a carrier. If anything, § 49-905 could be considered an included offense within the offense created by the regulation.

For these reasons, it is my opinion that the PUC regulations do not conflict with the Idaho statutes, and violations of the regulations may be proceeded against independent of the provisions of title 49 of the Idaho Code.

Yours very truly,



MICHAEL KANE
Deputy Attorney General
Chief, Criminal Law Division

MK/mkf