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August 15, 1991

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The Honorable Tom Boyd
Speaker of the House
Idaho House of Representatives
Room 309 - Statehouse
Boise, ID 83720

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

Re: Ethics Opinion Request/"Buy Idaho"

Dear Speaker Boyd:

Your letter of July 22, 1991, requested an ethics review from the Attorney General concerning promotional gifts provided to members of the Idaho Legislature by the marketing association known as "Buy Idaho." Specifically, your letter indicated that last year the "Buy Idaho" association provided Idaho legislators a complimentary shopping bag containing Idaho products intended to promote the variety and quality of merchandise produced in Idaho. Your letter stated that several legislators have raised the question whether the gift pack exceeds the monetary value that a legislator can receive for that type of promotion.

The statutory provisions relevant to legislative ethics are located primarily in two areas of the Idaho Code: The Ethics in Government Act, chapter 7, title 59, Idaho Code, and the Bribery and Corrupt Influence Act, Idaho Code, chapter 13A, title 18.

Turning to the Ethics in Government Act, a "conflict of interest" occurs when a legislative official takes official action or makes an official decision or recommendation, the effect being to the "private pecuniary benefit" of such person,

The Honorable Tom Boyd
Speaker of the House
August 15, 1991
Page 2

the person's household or business. Idaho Code § 59-703(4). Based upon the facts in your letter, it is difficult to foresee any legislator having a conflict of interest, as defined by Idaho Code § 59-703(4), resulting from the acceptance of the "Buy Idaho" complimentary gift pack. By definition, conflict of interest requires some official action by the legislator, the effect of which action is to the private pecuniary benefit of that specific legislator. From the facts provided in your letter, there is no indication the receipt of the gift pack was the result of any official action, decision or recommendation taken or proposed by any legislator.

The Bribery and Corrupt Influence Act states no legislator "shall solicit, accept or agree to accept any pecuniary benefit in return for action on a bill, legislation, proceeding or official transaction, known to be interested in a bill, legislation, official transaction or proceeding, pending or contemplated before the legislature or any committee or agency thereof." (Emphasis added.) Idaho Code § 18-1356(4). The prohibition described in Idaho Code § 18-1356(4) does not apply to "trivial benefits not to exceed a value of fifty dollars (\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality." Idaho Code § 18-1356(5)(c). Based upon the facts of your letter, there was no violation of § 18-1356(4), since the gift pack was not given in exchange for specific action by a legislator on a particular bill, legislation or proceeding. Since there is no violation of § 18-1356(4), it is not necessary to consider the application of the "trivial benefits" (gifts under fifty dollars) exception under § 18-1356(5)(c).

Idaho Code § 18-1359 is the only other section of the Bribery and Corrupt Influence Act worthy of consideration on this issue. It states:

[N]o public servant shall:

...

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars

The Honorable Tom Boyd
Speaker of the House
August 15, 1991
Page 3

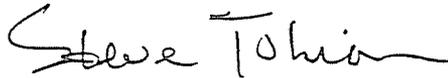
(\$50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

Idaho Code § 18-1359(1)(b).

There are no facts in your letter to suggest that the "Buy Idaho" gift pack was given to a legislator as payment for services, advice, assistance or conduct. Mere acceptance of the gift pack does not violate the provision of Idaho Code § 18-1359(1)(b).

Analysis of your request under the relevant sections of the Ethics in Government Act and the Bribery and Corrupt Influence Act leads to the conclusion that mere acceptance of the gift pack from "Buy Idaho" does not violate the standards enacted in either of the Idaho Code chapters.

Sincerely,



STEVE TOBIASON
Deputy Attorney General
Chief, Legislative and
Public Affairs Division

ST/mkf