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The Honorable Ron Beitelspacher
Idaho State Senator
P.O. Box 415
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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF
THE ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Balanced Budget Requirements

Dear Senator Beitelspacher:

This letter is in response to the inquiries contained in your letter of September 10, 1991, regarding the duty of the Governor to present a balanced budget to the legislature, the duty of the legislature to approve a budget which is balanced with the revenue projections adopted by the legislature, and further requesting legal guidance on which revenue estimates should be used by the legislature. Our response requires an analysis of art. 7, sec. 11 of the Idaho Constitution. The pertinent portion of art. 7, sec. 11 states: "[n]o appropriation shall be made, nor any expenditures authorized by the legislature, whereby the expenditure of this state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine of this article, to pay such appropriation or expenditure within such fiscal year."

The Idaho Supreme Court, in interpreting the provisions of articles 7 and 8 of the constitution, found the intent of the framers to be explicit in providing that "appropriations for current expenses and the raising of revenues to meet those

appropriations . . . [be] treated . . . as a cash transaction." Stein v. Morrison, 9 Idaho 426, 451, 75 Pac. 246 (1904). Art. 7, sec. 11 thereby requires the state to maintain a balanced budget.

Pursuant to Idaho Code § 67-3506, the Governor must transmit a budget document to the legislature not later than five days following the convening of the regular legislative session. There is no statutory requirement that the Governor provide a balanced executive budget to the legislature. However, since the Chief Executive is also designated as the chief fiscal officer of the state, it would appear that a good faith obligation to provide a balanced budget to the legislature could be implied.

Art. 7, sec. 11 of the Idaho Constitution speaks specifically to the actions of the legislature. Therefore, to comply with the requirements of this section, the legislature should make appropriations which balance with the revenue projection. In each legislative session, the legislature, by concurrent resolution, adopts a revenue projection. The legislature receives revenue projections from the Department of Financial Management and the Legislative Budget Office. There are no constitutional or statutory provisions which provide guidance in determining which projection should be adopted by the legislature. However, by adopting the projection, the legislature evidences its opinion as to the amount of revenues which will be available in the upcoming fiscal year. To meet the constitutional requirements of art. 7, sec. 11, the legislature should make appropriations which balance with the revenue projections adopted by concurrent resolution. If the legislature fails to carry out the constitutional mandate of art. 7, sec. 11, its right to determine and direct appropriations may be affected. Pursuant to Idaho Code §§ 67-3512A and 67-3512, the Governor and the Board of Examiners have authority to reduce appropriations to bring the budget into compliance with the constitutional requirements of art. 7, sec. 11.

Pursuant to Idaho Code § 67-3512A, if there is a failure or deficit in revenue which results in expenditures authorized by the legislature for the current fiscal year exceeding anticipated monies, the Governor may by Executive Order temporarily reduce the allotments on file in the offices of the State Auditor for any department, office or institution of the state. However, the Governor is prohibited from making a reduction in allotments for elected officers in the executive department which would prohibit the discharge of their constitutional duties and further, no reduction of allotments for the legislative and judicial

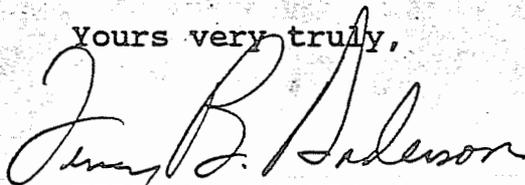
departments may be made without the permission in writing of the head of such department.

Pursuant to Idaho Code § 67-3512, the Board of Examiners, upon an investigation or report of the Administrator of the Division of Financial Management, may also reduce appropriations made to any department, office or institution of the state. However, a hearing before the Board of Examiners must take place prior to a reduction being ordered unless the head of the department, office or institution affected files in writing a consent to the reduction. The Board of Examiners is also precluded from reducing appropriations which would result in an inability to discharge constitutional duties and is further precluded from reducing the appropriations from the legislative and judicial departments without the written consent of the head of such departments.

In summary, the legislature has a constitutional duty to balance its appropriations with the projected revenues adopted by concurrent resolution. If revenues fall short of the appropriations made by the legislature, the obligation to reduce appropriations to bring the state into compliance with the requirement of art. 7, sec. 11 of the Idaho Constitution fall to the Board of Examiners or the Governor pursuant to the powers provided in Idaho Code §§ 67-3512 and 67-3512A.

I hope this response adequately addresses the concerns raised in your letter. If the Attorney General's Office can be of further assistance, please contact me.

Yours very truly,



TERRY B. ANDERSON
Deputy Attorney General
Chief, Business Regulation
and State Finance Division

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