

## ATTORNEY GENERAL OPINION NO. 92-4

TO: Charles Bolles  
State Librarian  
Idaho State Library  
**STATEHOUSE MAIL**

Per Request for Attorney General's Opinion

### QUESTION PRESENTED

Do Idaho Code §§ 33-2737 through 33-2740 provide that the four school-community libraries that existed on June 30, 1992, are now, in fact, "school-community library districts" and therefore are governed by boards that are separate from the school districts and that have their own authority to levy taxes separate from the school districts?

### CONCLUSION

Yes. The record of legislative history shows that the Idaho Legislature intended to make school-community libraries into school-community library districts with their own taxing authority.

### ANALYSIS

#### Legislative History

At the outset, it is helpful to trace the evolution of what we now know as school-community library districts. In 1901, the Idaho Legislature enacted Senate Bill No. 6, which authorized the establishment and maintenance of public libraries in school districts where no incorporated town or village was situated. When at least 20 electors in a school district petitioned for an election, school district voters decided whether to establish a school district public library. Once such a public library was approved, the trustees of those school districts had the authority, annually, to levy a tax not in excess of one mill. In effect, the school trustees had the same powers, duties, and authority granted to a city or village, and the treasurer of the board of trustees performed the duties of the treasurer for the public library. Act of Feb. 27, 1901, p. 3, 1901 Idaho Sess. Laws (public libraries).

In 1943 the statute was amended to provide that the unincorporated town or village was required to have a population in excess of one thousand within which no public library and reading room was established or maintained. The taxing authority was

increased from one mill to two mills. Act of Mar. 8, 1943, C.170, p. 358, 1943 Idaho Sess. Laws (school district public libraries).

In 1955 the statute was further amended to provide that the trustees of every school district had the power to contract for specified library services with an existing library district, and/or become a part of an existing library district by majority vote of the qualified electors of the school district. Act of Mar. 11, 1955, C.128, p. 266, 1955 Idaho Sess. Laws (school district libraries).

In 1963 the Idaho Legislature recodified the statutes dealing with public libraries, adopting Idaho Code § 33-2601, which pertained to school-community libraries. However, the provisions for petition, election, governance, and taxing authority remained the same. Act of Feb. 15, 1963, C.13, p. 27, 1963 Idaho Sess. Laws (recodification of education statutes).

In 1975 the authorized levy was increased from two mills to three mills. The statement of purpose attached to the bill indicates that six school districts had school-community library boards. Act of Mar. 24, 1975, C.105, p. 215, 1975 Idaho Sess. Laws (school community libraries).

In 1992 the Idaho Legislature significantly altered statutory references to school-community libraries (now referred to as school-community library districts). Section 33-2601, Idaho Code, was re-numbered as § 33-2737, and was amended to change the reference from "school-community libraries" to "school-community library districts." Several sections of the original statute were eliminated and three new sections were added to provide for school-community library district boards of trustees (§ 33-2738), the trustees' powers and duties (§ 33-2739), and consolidation and reorganization of the school-community library districts into library districts (§ 33-2740). Act of Apr. 8, 1992, C.275, p. 848, 1992 Idaho Sess. Laws (school community library districts).

On June 30, 1992, there were four school districts with school-community libraries: namely, Snake River School District No. 52, since 1951; Sugar-Salem School District No. 322, since 1952; Kuna Joint School District No. 3, since 1964; and Rockland School District No. 382, since 1974.

## **Discussion**

The issue that is unclear on the face of the statute is whether the four school-community libraries became school-community library districts on July 1, 1992, or whether the former school-community libraries ceased to exist.

The statement of purpose for the 1992 legislation states:

This legislation clarifies that a school-community library district is a type of library district and not a subdivision of the school district. The legislation requires that the levy funds of the library district be kept separate from the school district accounts, and audited separately from the school district funds. The legislation clarifies that school-community library district assessments are for establishing and maintaining public library services. This legislation also provides clear procedures for an existing school-community library to either join an existing library district or become a library district. The legislation provides for a sunset date of June 30, 1994, for the establishment of new school-community library districts.

Second Regular Session of the 51st Idaho Legislature of 1992, House Bill No. 785, Statement of Purpose/Fiscal Impact.

The minutes of the discussion of the House Education Committee on March 4, 1992, set forth the statement of Representative Duncan:

He stated that the present problem with the school-community libraries is that it is not clear in their legislation whether they are a library district, although they do have levy authority. Some of the school-community libraries are actually operating to the line item on the school district budget, and there's no audit authority for the school-community libraries. Most people don't see the school-community library idea going too much farther in our history because the two do not fit well together, except in the four situations where it currently exists.

Idaho House Education Committee Minutes, Mar. 4, 1992, at 2 (statement of Representative Duncan).

During a meeting of the Senate Education Committee on March 27, 1992, Senator Twiggs spoke in support of the bill:

*Senator Twiggs* spoke in support of the bill and said he would not be in support if he felt it would destroy the relationships of the existing school-community libraries. He stated that the Superintendent Association has no problem with the bill. He also stated that this bill addresses the concerns expressed by the Sugar-Salem school district about the use of tax dollars meant for the libraries.

Senate Education Committee Minutes, Mar. 27, 1992, at 1 (statements of Senator Twiggs). After a motion was made and seconded on March 27, 1992, in the Senate Education Committee, the following discussion took place:

*Senator Larsen* talked with the Rockland School District (see Appendix A) and the Sugar-Salem School District. *Adrien Taylor*, Idaho Library Association, supports the bill. *Ezra Moore*, Idaho School District Council, provided background for the bill. He said that it may ease the minds of the four school-community libraries if a letter were written requesting an amicable transition. *Senator Osborne* likes the concept of school-community libraries and is concerned about the clause that bans future ones. *Charles Bolles*, State Library, said that library boards can contract with schools. There are not many locations which share facilities, although there are some areas where there is strong cooperation. *Senator Noh* understands the intent of the language is to move school-community libraries to another section of the Code, but he fears the chilling effect of the wording. *Senator Osborne* stated he was not against the bill but is concerned with areas of the state that do not have library facilities. *Senator Burkett* has attended too many meetings where an attorney has stopped action by noting specific wording in the Statutes. On a voice vote, the motion was approved.

Senate Education Committee Minutes, Mar. 27, 1992, at 1, 2 (statements of Senator Larsen, Adrien Taylor, Ezra Moore, Senator Osborne, Charles Bolles, Senator Noh, Senator Burkett).

In construing statutes, the Idaho Supreme Court has enunciated the following principles:

In construing a statute, this Court attempts to discern and implement the intent of the legislature. In performing this function, courts variously seek edification from the statute's legislative history, examine the statute's evolution through a number of amendments, and perhaps seek enlightenment in the decisions of sister courts which have resolved the same or similar issues. Another method, [*sic*] we have employed is to examine the purposes of the act and its structure as a whole in an attempt to discern the legislative intent behind the statute.

Liefeld v. Johnson, 104 Idaho 357, 367, 659 P.2d 111, 121 (1983) (citations omitted).

In construing a statute, it is the duty of this court to ascertain the legislative intent, and give effect thereto. In ascertaining this intent, not

only must the literal wording of the statute be examined, but also account must be taken of other matters, "such as the context, the object in view, the evils to be remedied, the history of the times and of the legislation upon the same subject, public policy, contemporaneous construct, and the like."

Messenger v. Burns, 86 Idaho 26, 29-30, 382 P.2d 913, 915 (1963) (citation omitted). *See also* State v. Hoch, 102 Idaho 351, 352, 630 P.2d 143, 144 (1981).

Principles of statutory interpretation require this Court to ascertain and give effect to the legislative intent. "The intent of the legislature may be implied from the language used, or inferred on grounds of policy or reasonableness." In effectuating the legislative intent behind an ambiguous statute, the Court should, if possible, avoid indulging in a statutory construction which would cause absurd or unduly harsh results.

Gavica v. Hanson, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980) (citations omitted).

If a latent ambiguity arises, the purpose of the statute should be used for guidance to resolve the ambiguity. As stated in University of Connecticut v. Freedom of Information Commission, 585 A.2d 690 (1991):

If the language of a statute is clear and unambiguous, its meaning is not subject to construction. When application of the statute to a particular situation reveals a latent ambiguity in seemingly unambiguous language, however, we turn for guidance to the purpose of the statute and its legislative history to resolve that ambiguity.

585 A.2d at 693 (citations omitted). *See also* Sutherland, Statutory Construction § 46.04 (5th Ed.); West v. Kerr-McGee Corp., 765 F.2d 526 (1985).

The 1992 legislation dealing with school-community libraries is ambiguous. When the statutes are reviewed, it is not clear whether "school-community libraries" were automatically grandfathered and became "school-community library districts" on July 1, 1992, or whether the school-community libraries ceased to exist and were required to commence anew if they wished to retain the status now referred to as "school-community library districts." If the four school-community libraries ceased to exist, those four communities no longer have library services. The newly enacted statutes do not address what becomes of the library inventory and the employees of those libraries. Statements of legislative intent make it apparent that the legislature never intended the school-community libraries to cease to exist, resulting in the elimination of public library services to those communities. Applying such an interpretation to the school-community libraries would be an absurd and unduly harsh result.

Nowhere in the legislative history is there any discussion whatsoever that the patrons of the prior school-community libraries would need to vote to establish school-community library districts. On the contrary, Senator Noh understood "the intent of the language" was simply "to move school-community libraries to another section of the Code, . . ." The legislature did not repeal Idaho Code § 33-2601, but, rather, changed the numbering to § 33-2737. The only plausible interpretation of such action is that the legislature intended to grandfather the preexisting school-community libraries and confer upon them the new status of "school-community library districts," effective July 1, 1992.

The school-community libraries existing prior to July 1, 1992, had complied with the election process at the time of their formation. If the school-community libraries now cease to exist, and the electors of those districts are required to again go through the election process, the legislature has placed an unnecessary and surely unintended burden on those electors and has nullified the electors' prior actions. The testimony before the Idaho Senate Education Committee stressed the need for an "amicable transition." Legislators spoke about the concerns of specific existing school-community libraries. Senator Twiggs said he would not be in support if he felt the bill would destroy the relationships of the existing school-community libraries. On the basis of this legislative history, it cannot be seriously suggested that the legislature intended to dissolve the existing school-community libraries and force them to go through an election to reconstitute themselves as school-community library districts.

Furthermore, if the patrons of the four school districts that had school-community libraries are required to go through the election process, those patrons would effectively be without library services for approximately fifteen months, if not longer, because, as new taxing districts, they would not be permitted to levy any taxes or collect any revenue for that period of time. *See* Idaho Code § 63-921. Again, it is inconceivable that the Idaho Legislature could have intended that the existing school-community libraries would be deprived of revenue for an entire year. It is clear the legislature intended them to have uninterrupted taxing authority.

The intent of the 1992 Idaho Legislature, in enacting Idaho Code §§ 33-2740 through 33-2737, was to provide a method for auditing public libraries contained in the four school districts' buildings, and to ensure that funds raised for school-community libraries were actually used for this purpose; to provide for an independent board of trustees, separate from the board of trustees of school districts; and to continue library services to the four school districts that already had school-community libraries. The legislature also intended to provide for the least disruptive means available to make the transition from a school-community library to a school-community library district.

## SUMMARY

The principles of statutory construction make it clear that if there is an ambiguity in a statute, the courts look to the legislative intent and should avoid applying a statutory construction that would cause absurd or unduly harsh results. A review of the legislative history makes it apparent that the Idaho Legislature intended to provide that the four school-community libraries that existed on June 30, 1992, became school-community library districts with continuous taxing authority on July 1, 1992, and without the need for the patrons of those school districts to determine anew that issue by election.

## **AUTHORITIES CONSIDERED**

### **1. Idaho Statutes:**

Idaho Code § 33-2737.

Idaho Code § 33-2738.

Idaho Code § 33-2739.

Idaho Code § 33-2740.

### **2. Idaho Session Laws:**

Act of Feb. 27, 1901, p. 3, 1901 Idaho Sess. Laws (public libraries).

Act of Mar. 8, 1943, C.170, p. 358, 1943 Idaho Sess. Laws (school district public libraries).

Act of Mar. 11, 1955, C.128, p. 266, 1955 Idaho Sess. Laws (school district libraries).

Act of Feb. 15, 1963, C.13, p. 27, 1963 Idaho Sess. Laws (recodification of education statutes).

Act of Mar. 24, 1975, C.105, p. 215, 1975 Idaho Sess. Laws (school community libraries).

Act of Apr. 8, 1992, C.275, p. 848, 1992 Idaho Sess. Laws (school community libraries).

Second Regular Session of the 51st Idaho Legislature of 1992, House Bill No. 785, Statement of Purpose/Fiscal Impact.

**3. Idaho Cases:**

Liefeld v. Johnson, 104 Idaho 357, 367, 659 P.2d 111 (1983).

Messenger v. Burns, 86 Idaho 26, 29-30, 382 P.2d 913, 915 (1963).

State v. Hoch, 102 Idaho 351, 352, 630 P.2d 143, 144 (1981).

Gavica v. Hanson, 101 Idaho 58, 60, 608 P.2d 861, 863 (1980).

**4. Cases From Other Jurisdictions:**

University of Connecticut v. Freedom of Information Commission, 585 A.2d 690, 65 Ed. Law 786 (1991).

West v. Kerr-McGee Corp., 765 F.2d 526 (1985).

**5. Other Authorities:**

Idaho House Education Committee Minutes, Mar. 4, 1992, at 2 (statement of Representative Duncan).

Senate Education Committee Minutes, Mar. 27, 1992, at 1 (statements of Senator Twiggs).

Senate Education Committee Minutes, Mar. 27, 1992, at 1,2 (statements of Senator Larsen, Adrien Taylor, Ezra Moore, Senator Osborne, Charles Bolles, Senator Noh, Senator Burkett).

Sutherland, Statutory Construction § 46.04 (5th ed).

DATED this 3rd day of November, 1992.

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**Analysis by:**

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