

## ATTORNEY GENERAL OPINION NO. 92-5

TO: Richard Bass  
George Hyer  
Chester Sellman  
Board of Commissioners, Owyhee County  
Courthouse, P.O. Box 128  
Murphy, Idaho 83650

### QUESTION PRESENTED

Are lands under the jurisdiction of the various executive agencies of the State of Idaho subject to zoning laws enacted by a county?

### CONCLUSION

A state agency must comply with valid county ordinances<sup>1</sup> enacted pursuant to the Local Planning Act, Idaho Code §§ 67-6501 to 67-6537, unless a statutory or constitutional provision provides an express exemption for the agency or impliedly preempts the application of the ordinance. Whether the activities of a particular state agency are exempt from regulation or whether the application of a particular ordinance to an agency is preempted by other provisions of law must be determined on a case-by-case basis.

### ANALYSIS

The Local Planning Act of 1975 allows cities and counties to enact planning and zoning laws pursuant to the terms of the Act. These terms include the preparation by each city or county of a comprehensive plan. Idaho Code § 67-6508. The purpose of such plans is to "promote the health, safety, and general welfare of the people," by protecting natural resources, promoting the best use of available lands and enhancing the economy. *See* Idaho Code § 67-6502.

The Local Planning Act has been construed as a delegation of broad planning and zoning powers to local governing boards. Worley Highway District v. Kootenai County, 104 Idaho 833, 633 P.2d 1135 (Ct. App. 1983). This delegation of authority to local governments, however, must be carefully applied when a local government attempts to regulate properties owned or controlled by the state. "[A] municipal corporation, as a

---

<sup>1</sup> For purposes of this opinion, we have assumed that any zoning ordinances have been enacted in accordance with the requirements of the Local Planning Act. Additionally, we have assumed that the Local Planning Act itself is constitutional.

creature of the state, possesses and exercises only those powers either expressly or impliedly granted to it." Sandpoint Water & Light Co. v. City of Sandpoint, 31 Idaho 498, 503, 173 P. 972, 977 (1918). Since the authority of local governments is derived from the state, it necessarily follows that local governments may not exercise control over the activities of the state, absent a delegation of such authority in a statutory or constitutional provision.

Such a delegation does occur in the Local Planning Act. "The state of Idaho, and all its agencies, boards, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided by law." Idaho Code § 67-6528 (emphasis added). This section expresses a legislative policy that state agencies should comply with local zoning ordinances, but reserves the right to exempt state agencies from compliance where necessary to fulfill state policies. Thus, if the constitution or statutes of the state of Idaho exempt a state agency from compliance, local governments may not apply zoning ordinances to that agency. In some cases, an exemption may be express on the face of a statute. An example of express preemption is found in the Local Planning Act itself, which exempts "transportation systems of statewide importance," and certain public utility projects, from the Act's provisions. Idaho Code § 67-6528.

The legislature is not required, however, to expressly provide that a particular state activity is exempt from the provisions of the Local Planning Act. Legislative intent to preempt local zoning authority may be implied if there is a direct conflict between a general statute or regulation and a local ordinance. See Caesar v. State, 101 Idaho 158, 161, 610 P.2d 515, 518 (1980). The doctrine of state preemption of conflicting local ordinances is grounded in the Idaho Constitution:

Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with the general laws.

Idaho Constitution, art. 12, § 2 (emphasis added).

Preemption is also inferred if a statutory scheme indicates the legislature's intent to completely regulate a particular subject matter:

Where it can be inferred from a state statute that the state has intended to fully occupy or preempt a particular area, to the exclusion of [local governmental entities], a [local] ordinance in that area will be held to be in conflict with the state law, even if the state law does not so specifically state.

Envirosafe Services of Idaho, Inc. v. County of Owyhee, 112 Idaho 687, 689, 735 P.2d 998, 1000 (1987), quoting Caesar v. State, 101 Idaho 158, 161, 610 P.2d 517, 520 (1980) (alterations in original).

Several examples of implicit preemption of the Local Planning Act have been addressed previously by this office. In Attorney General Opinion 91-3, we reviewed the constitutional and statutory provisions vesting the State Board of Land Commissioners ("Land Board") with authority to decide the best use or uses of state lands. We concluded that such provisions impliedly exempted the Land Board from compliance with the Local Planning Act. Idaho Attorney General's Annual Report for 1991, at 41. Similarly, in Attorney General Opinion 83-6, we addressed the preemptive effect of the Lake Protection Act, which vests the Land Board with comprehensive authority to control encroachments on navigable lakes. We concluded that the enactment of the Lake Protection Act's pervasive and comprehensive regulatory scheme manifested the legislature's intent that the Land Board's regulations would be exclusive. Idaho Attorney General's Annual Report for 1983, at 74.

Additionally, it should be noted that in enacting the Local Planning Act, it was the legislature's intent that local governments must take steps to minimize conflicts between local zoning ordinances and the land use plans of state agencies, as shown by the following provision:

In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, institutions, and local special purpose districts.

Idaho Code § 67-6528 (emphasis added). This provision, in conjunction with the provision requiring state agencies to comply with local zoning ordinances, promotes cooperation between state and local governments in determining the best uses of lands owned or possessed by state agencies. In fact, the mandatory language of the above provision suggests that it is a condition that must be fulfilled before local zoning ordinances are applied to state lands. Thus, in order to ensure compliance with the authorities delegated under the Local Planning Act, local governments should work closely with state agencies when enacting zoning ordinances that apply to lands under state control.

## **AUTHORITIES CONSIDERED**

### **1. Idaho Constitutional Provisions:**

Idaho Constitution art. 12, § 2.

**2. Idaho Statutes:**

Idaho Code §§ 67-6502 to 6528.

**3. Idaho Cases:**

Sandpoint Water & Light Co. v. City of Sandpoint, 31 Idaho 498, 173 P.2d 972 (1918).

Caesar v. State, 101 Idaho 158, 610 P.2d 517 (1980).

Worley Highway District v. Kootenai County, 104 Idaho 833, 633 P.2d 1135 (Ct. App. 1983).

Envirosafe v. County of Owyhee, 112 Idaho 687, 735 P.2d 998 (1987).

**4. Other Authorities:**

Idaho Attorney General Op. No. 83-6, Annual Report, at 74 (1983).

Idaho Attorney General Op. No. 91-3, Annual Report, at 41 (1991).

Dated this 1st day of December, 1992.

LARRY ECHOHAWK  
Attorney General  
State of Idaho

**Analysis by:**

STEVEN W. STRACK  
Deputy Attorney General  
Natural Resources Division