

March 9, 1993

Ms. G. Anne Barker, Administrator
Department of Public Works
STATEHOUSE MAIL
Boise, ID 83720

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

Re: Boise City Requirement of an Assembly Permit for the Idaho Historical
Museum

Dear Anne:

You have inquired as to whether the Boise City Fire Department could impose, against the state, provisions of the Uniform Fire Code not adopted by the state and require the state to pay an assessment for an assembly permit. From the facts provided in your letter, it appears that the Boise City Fire Department (BCFD) conducted an inspection of the Idaho Historical Museum and noted various items that require correction to meet the city fire code. The BCFD gave the Historical Society a limited number of days to make the corrections and told the Society that its ability to conduct meetings would be curtailed if the deficiencies were not corrected. In addition, BCFD assessed a fee for an "assembly permit."

As discussed at length in Attorney General Opinion 90-6, in Idaho, municipal corporations are considered creatures of the state and possess no inherent powers other than those powers expressly or impliedly granted. Sandpoint Water and Light Company v. City of Sandpoint, 31 Idaho 498, 173 P. 972 (1918); 6A McQuillan Municipal Corporations § 24.35 (3d ed.).

The authority for a municipal corporation to enact and enforce building and safety codes is derived from the police powers granted to municipalities in the Idaho Constitution, article 12, section 2. See Caesar v. State, 101 Idaho 158, 610 P.2d 517 (1980); State v. Clark, 88 Idaho 365, 399 P.2d 955 (1965). Article 12, section 2, of the constitution provides that "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 its charter or with the general laws." (Emphasis added.)

Although the city may have a direct constitutional grant of local police power, that power is limited in certain respects. It has been consistently held that the city cannot act in an area which is so completely covered by general laws as to indicate that it is a matter

of state concern. In re Hubbard, 396 P.2d 809 (Cal. 1964). Nor may it act in an area where to do so would compete with the state's general laws. Caesar; State v. Musser, 67 Idaho 214, 176 P.2d 199 (1946).

The court in Caesar determined that the area of state-owned buildings was so completely covered by the general laws as to not be subject to local ordinance control. The court went on to note that it recognized the authority placed in the Boise City Building Inspector would conflict with the authority vested in the Idaho Industrial Commission and the Department of Labor. The court thus held that the local Boise City Building Inspector could not exercise authority over state-owned buildings.

As noted in Attorney General Opinion 90-6, the state's exclusive authority over construction and maintenance of its own buildings remains unchanged and the legal principles set forth in Caesar continue to be binding precedence. The Boise City Fire Department is without authority to require the Idaho Historical Museum, as a state-owned and occupied building, to meet city fire codes and to pay an assessed "assembly permit" fee. The opinion previously given by the Attorney General interpreting the holding in Caesar applies, and there is simply no basis for local infringement on the state's authority in this area.

I hope this addresses your concerns. If I can be of further assistance on this or any other matter, please let me know.

Very truly yours,

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