

June 25, 1993

Honorable Lydia Justice Edwards
Idaho State Treasurer
STATEHOUSE MAIL
Boise, ID 83720-1000

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

Re: Fish and Game Contract with Stylart

Dear Lydia:

I have conducted an investigation into the procedures surrounding the contract with Fish and Game and Stylart. It appears that Stylart is, as the newspaper articles indicated, taking applications for controlled hunts over the phone and accepting fees for the application and tags by credit card. In addition, Stylart is charging a service fee of \$4.00 per call plus 3% of the transactural amount per phone call. The service fee going to Stylart is taken off the top and the remainder of the fee is ultimately placed into the Treasurer's sweep account.

Once the drawing for the controlled hunt has been completed, Fish and Game anticipated Stylart providing the names and amounts paid by the applicants who did not receive a permit or tag in the draw to be provided to Fish and Game. Fish and Game would then request one refund check for all credit card applicants be given to Stylart for purposes of making the refunds to those applicants. Stylart is not bonded to protect the state if the refund owed to the hunter by the state is not paid by Stylart.

With reference to this contract, the questions you have asked us to address are:

1. Did Fish and Game have authority to enter into a contract with Stylart for the services being provided?
2. Is it appropriate for the state to tender all refunds on credit card applications to Stylart for disbursement by Stylart to hunters owed reimbursement?

With reference to the first question, we reviewed the authority of the Department of Fish and Game to undertake this type of program with Stylart. Pursuant to Idaho Code § 36-104(b)(5)(C), the Department of Fish and Game is precluded from charging a fee to any individual for submitting an application to participate in a controlled hunt which exceeds the permit fee delineated by statute.

The Department of Fish and Game contends that Stylart is not authorized to sell licenses. Therefore, Idaho Code § 36-306 allowing authorized persons to charge a commission of \$1.00 upon all licenses, tags and permits for which there is a fee does not apply to Stylart. However, there is no additional statutory authority which would allow them to charge the fee being assessed for the service that they are providing. And, in fact, the provision of Idaho Code § 36-104(b)(5)(C), discussed above, strictly precludes it.

In reference to the second question, it would be my opinion that the state should not transfer refunds through Stylart for ultimate repayment to hunters not obtaining a tag in the draw. Fish and Game has not required Stylart to obtain a bond to protect the state in the event that Stylart failed to make appropriate distribution of the refund monies to the hunters. Fish and Game contends that it has no statutory right to demand a bond from Stylart and, technically, it is right, because Fish and Game has no statutory authority to enter into a contract with Stylart to provide these types of services. As noted by you in our conversation, the duty of the state is to refund the money to the hunter who has paid for the permit and not had his name drawn. *See generally* Idaho Code §§ 67-1001, 67-1011. Payment by the state to anybody but that individual, without authority from statute or the party owed the refund, would be inappropriate.

In conclusion, it would appear that Fish and Game and Stylart are acting in violation of statutory authority by charging a service fee on applications taken by telephone. Further, the state cannot issue refunds to a third party for repayment to the sportsman to whom the state owes a refund without appropriate waivers from the individual hunters or specific statutory authority.

I hope this letter adequately addresses your questions. If you have any further concerns, please give me a call.

Very truly yours,

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