

March 8, 1994

Mr. Bob Peyron, Chairman
Permanent Building Fund Advisory Council
Department of Administration
STATEHOUSE MAIL
Boise, ID 83720

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

Re: Governor's Residence

Dear Mr. Peyron:

By your letter of March 2, 1994, you asked four questions concerning the creation and appropriations to the Governor's Residence Account by legislative acts in 1977, 1989, 1990 and 1993. Your inquiry is focused on whether these legislative acts are sufficient to allow the Permanent Building Fund Advisory Council to commence construction of a governor's residence without further legislation. In particular, you are concerned as to whether the provision of art. 7, § 13 of the Idaho Constitution has been met. You also inquire as to whether the requirements for unity of subject and title found in art. 3, § 16 of the Idaho Constitution have been satisfied. You ask whether there has been compliance with the governor's constitutional right of line item veto on appropriation bills. Finally, you question whether and on what basis the Permanent Building Fund Advisory Council is authorized to commence construction of the governor's residence.

Prior to addressing these issues, it would be helpful to review the pertinent portions of the legislative acts which created the Governor's Residence Account and provides for the perpetual appropriation of funds in that account.

I.

HISTORICAL OVERVIEW

In 1977, the legislature enacted House Bill 275 which, among other things, provided for the creation of a dedicated fund to be called the Governor's Residence Account which was to consist of:

[M]oneys received from any and all gifts, grants or endowments from any and all persons, firms, organizations, corporations, and otherwise, for the purpose of decorating, equipping, completing and/or furnishing the governor's residence and/or landscaping the grounds surrounding such residence.

1977 Idaho Sess. Laws 903. The legislature allowed all monies deposited to the account to be:

[P]erpetually appropriated and set apart for the purposes for which the moneys are received, the same to be available for such purposes immediately upon their being credited to the said account, upon authorization for expenditure being given by the Permanent Building Fund Advisory Council, and the Division of Public Works.

Id. at 903-04 (emphasis added).

In 1989, the legislature again addressed the issue of the Governor's Residence Account in Senate Bill 1148. It authorized and directed the State Land Board of Commissioners to act as custodian for the governor's mansion then on North 21st Street in Boise, Idaho. The Department of Lands was provided authorization to dispose of the property by sale. Any monies realized from the sale of the governor's residence were to be deposited to the Governor's Residence Account.

The bill created an agency asset fund in the state treasury designated as the Governor's Residence Account. The stated purpose for the account was broadened from the 1977 act to include site acquisition, planning and construction of a governor's residence. As in the 1977 act, monies were perpetually appropriated for the purposes stated in the act. Since the 1977 and 1989 acts essentially address the same issues, for purposes of this analysis it is necessary to focus only on the 1989 act.

In 1990, the Idaho Legislature adopted Senate Bill 1647 which was enacted into law as chapter 337 of the 1990 Session Laws. Section 4 of this act provided an appropriation of \$778,800 from the permanent building fund account to the Governor's Residence Account.

In 1993, the Idaho Legislature adopted House Bill 442 which was enacted into law as chapter 382 of the 1993 Sessions Laws. Section 8 of this act appropriated \$150,000 from the Governor's Residence Account for the purpose of "planning and designing an Executive Residence."

II.

ANALYSIS

A. Art. 7, § 13 of the Idaho Constitution.

The first issue raised by your letter is a question of whether the above-delineated acts comply with art. 7, § 13 of the Idaho Constitution. Art. 7, § 13 provides:

No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

The term "appropriation" as used in art. 7, § 13, has been defined by the court to mean (1) authority from the legislature, (2) expressly given, (3) in a legal form, (4) to proper officers, (5) to pay from public monies, (6) a specified sum, and no more, (7) for a specified purpose and no other. See Leonardson v. Moon, 92 Idaho 796, 804, 451 P.2d 542 (1969). See also State ex rel. Williams v. Adams, 90 Idaho 195, 409 P.2d 415 (1965); McConnell v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931).

The first five of these requirements are obviously met in the 1989 act. As to the requirement of a specified sum, and no more, the court in McConnell v. Gallet held:

However, from an examination of the authorities it appears that [the] element of specificness is necessary only when the appropriation is made payable from the general fund and is required solely as a protection against unlimited withdrawals from such fund under authority of a general appropriation. When, as here, the appropriation is made payable from a special fund, it is not necessary to appropriate a specific sum. The act is clearly an attempt to make a continuing appropriation of all money that at any time may be in the Adjutant General's Contingent Fund; and the authorities are unanimous that, in the absence of a constitutional

inhibition against continuing appropriations, they are valid.

51 Idaho at 390, 6 P.2d at 144 (emphasis added; citations omitted). Thus, the sixth requirement has been met by the continuing appropriation contained in the 1977 and 1989 acts.

The seventh and last requirement to meet the definition of "legal appropriation" is that monies be appropriated for a specific purpose and no other. The money contained within the Governor's Residence Account is for the specific purpose of "site acquisition, planning, construction of, decorating, equipping, completing and furnishing the governor's residence and/or landscaping the grounds" The language contained in the 1989 act states with specificity the purpose for which the account is to be used, meeting the seventh and last requirement.

You have also inquired as to whether these acts comply with the provisions of art. 3, § 16 of the Idaho Constitution, requiring unity of title and subject within an act.

B. Art. 3, § 16 of the Idaho Constitution.

Art. 3, § 16 of the Idaho Constitution states:

Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

As stated by the Idaho Supreme Court, the purpose of this provision:

[I]s to prevent fraud and deception in the enactment of laws, and to provide reasonable notice to the legislators and the public of the general intent and subject matter of the act.

Kerner v. Johnson, 99 Idaho 433, 452, 583 P.2d 360, 379 (1978). With reference to art. 3, § 16, in Federal Reserve Bank v. Citizens Bank and Trust Company, the Idaho Supreme

Court stated "[t]he title should not be as to such a character as to mislead or deceive either the lawmaking body or the public as to the legislative intent." 53 Idaho 316, 324-25, 23 P.2d 735, (1933). See also State v. O'Bryan, 96 Idaho 548, 555, 531 P.2d 1193, 1200 (1975).

The court has also held that the title of an act need not be an exhaustive compilation of the provisions contained therein. In State v. O'Bryan, the court stated that the "title of the legislative act must set forth the general subject, but need not serve as a catalog or index to the subject matter." 96 Idaho at 555, 531 P.2d at 1200. To invalidate a statute because its subject or object is not properly expressed in its title, the violation must not only be substantial, but must be plain, clear, manifest and unmistakable. See Golconda Lead Mines v. Neill, 82 Idaho 96, 103, 360 P.2d 221, 228 (1960).

Applying these standards to the 1989 act, it is clear that the title of Senate Bill 1148 delineates the substance of the legislation:

Relating to a governor's residence; authorizing and directing the State Board of Land Commissioners to act as custodian of certain surplus properties; authorizing the disposal of property as it becomes surplus and directing moneys realized from the sale to be credited to the governor's residence account; creating the governor's residence account in the agency asset fund and appropriating the moneys for the purposes specified, authorizing the division of public works to accept, store and use gifts and donations, and providing for investment of idle moneys in the account; reappropriating certain unexpended and unencumbered balances; and declaring an emergency.

Thus, the requirements of art. 3, § 16, are satisfied.

A question remains as to whether the appropriation made in 1990 complies with this provision. Senate Bill 1647 notes in the title of the act that there is an appropriation of monies from the "Permanent Building Fund Account to the Governor's Residence Account." Section 4 of the act provides an appropriation of \$778,800 to the Governor's Residence Account. This appears to comport with the

provisions of art. 3, § 16. The \$150,000 appropriation from the Governor's Residence Account provided in the 1993 act also complies with the provisions of art. 3, § 16, however, because of the perpetual appropriation, this appropriation was probably not necessary.

The next question raised by your correspondence is whether the provisions of the legislative acts comply with art. 4, § 11, which allows for gubernatorial line item veto of the appropriation bills.

C. Art. 4, § 11 of the Idaho Constitution.

Art. 4, § 11 of the Idaho Constitution reads in pertinent part as follows:

The governor shall have power to disapprove of any item or items of any bill making appropriations of moneys embracing distinct items, and the part or parts approved shall become a law and the item or items disapproved shall be void, unless enacted in the manner following

The appropriation of \$778,800 contained in Senate Bill 647 appears clear in its intent and could have been vetoed by the governor pursuant to art. 4, § 11. However, it was not. Further, although the appropriation of \$150,000 from the Governor's Residence Account was probably unnecessary due to the perpetual appropriation, this appropriation could have been vetoed by the governor pursuant to art. 4, § 11 of the Idaho Constitution. Again, it was not.

Although there was no appropriation provided in the 1977 and 1989 acts creating the Governor's Residence Account and providing for its functions, both acts could have been vetoed by the governor pursuant to the veto power provided in art. 4, § 10 of the Idaho Constitution. If any of the acts appeared to be structured to deceive or hide the actual intent of the act from the governor, there may have arguably been violations of art. 4, §§ 10 and 11. This, however, is not the case and there is no apparent violation of these provisions.

The final question addressed in your correspondence asked on what basis the Permanent Building Fund Advisory Council would be required to act.

D. Authority of the Permanent Building Fund Advisory Council.

Although there is no requirement in the Idaho Code for the Permanent Building Fund Advisory Council to prioritize state building projects, it is clear that Idaho Code § 67-5710 requires approval by the Permanent Building Fund Advisory Council as a "condition precedent to the undertaking of planning or construction" of any project. In addition, the 1989 legislation provides for a perpetual appropriation authorizing expenditures for the purposes stated only when authorization by the Permanent Building Fund Advisory Council and the Division of Public Works has been provided. Thus, it appears that there is no mandate that the council act. And, without the consent of the Permanent Building Fund Advisory Council and the Division of Public Works, planning or construction on a governor's residence cannot begin.

III.

CONCLUSION

In conclusion, art. 7, § 13, requiring an appropriation of a specified amount is met by the language in the 1977 and the 1989 acts which provides for a perpetual appropriation. The legislation meets the requirements of unity of title and subject within the act as required by art. 3, § 16 of the Idaho Constitution. The gubernatorial veto provisions provided in art. 4, §§ 10 and 11 of the Idaho Constitution were not violated by the acts creating the Governor's Residence Account and appropriating money to that account. Finally, Idaho Code § 67-5710 and the language of the 1989 act require the consent of the Permanent Building Fund Advisory Council and the Division of Public Works prior to undertaking planning or construction of a governor's residence.

I hope this adequately addresses the issues raised by your correspondence. If I can be of further assistance, please let me know.

Very truly yours,

TERRY B. ANDERSON
Chief, Business Regulation and

State Finance Division