

January 26, 1995

Dwight M. Bower, Director
Idaho Transportation Department
STATEHOUSE MAIL

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

Re: Constitutionality of Bluebird License Plate Program

Dear Mr. Bower:

During the process of transition to the new administration in the Attorney General's Office, we came across a letter in which you had requested an opinion from this Office concerning the constitutionality of Idaho Code § 49-417(2). I apologize for the delay in responding.

Your opinion request was triggered by an inquiry from a legislator during the 1994 legislative session. The legislator asked whether the Idaho wildlife special license plate program, authorized by Idaho Code § 49-417(2), violates art. 7, section 17 of the Idaho Constitution. We conclude that, while the program would probably pass constitutional muster, there is some risk of challenge, and we recommend that the statute be clarified.

The Idaho wildlife special license plate program took effect on July 1, 1993. Citizens who wish to purchase and display the Idaho wildlife special plates (known popularly as the "bluebird" license plates) pay the basic registration fee, the special license program fee, and an additional \$10.00 which is deposited into a special account at the Department of Fish and Game. Proceeds from this \$10.00 contribution are dedicated to nongame management and protection.

Financing for the program is established as follows:

In addition to the regular operating fee, the applicant shall be charged a fee of thirty-five dollars (\$35.00) for the initial issuance of the plates, and twenty-five dollars (\$25.00) upon each succeeding annual registration. Twenty-five dollars (\$25.00) of the initial fee and fifteen dollars (\$15.00) of the renewal fee shall be deposited in the state highway account and shall be used to fund the cost of administration of this special license plate program. Ten dollars (\$10.00) of each initial fee and ten dollars (\$10.00) of each renewal fee shall be deposited by the state treasurer

in the fish and game set-aside account pursuant to section 36-111, Idaho Code, for use in the nongame management and protection program.

Idaho Code § 49-417(2).

The question is whether this \$10.00 set-aside from each initial and renewal fee violates the provisions of Idaho Constitution, art. 7, section 17, which states:

On and after July 1, 1941 the proceeds . . . from any tax or fee for the registration of motor vehicles, in excess of the necessary costs of collection and administration and any refund or credits authorized by law, shall be used exclusively for the construction, repair, maintenance and traffic supervision of the public highways of this state and the payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purposes whatsoever.

(Emphasis added.) Thus, if the \$10.00 set-aside for bluebird license plates is found to be “the proceeds . . . from any tax or fee for the registration of motor vehicles,” it must be used exclusively for highway construction purposes and cannot be diverted for any other purpose whatsoever.

The Idaho Supreme Court has made it clear that the Idaho Legislature cannot divert monies earmarked for the highway fund for any purpose, no matter how worthwhile. In State ex rel. Moon v. Jonasson, 78 Idaho 205, 296 P.2d 755 (1956), the court held unconstitutional an appropriation of \$50,000.00 from the highway fund for the purpose of advertising the highways in the State of Idaho. The court stated:

Where specific funds or revenue are dedicated to a particular purpose the same cannot be used for any other purpose, and any Act of the Legislature attempting to provide otherwise is unconstitutional.

78 Idaho at 210, 296 P.2d at 760.

The court used equally strong language to defend the highway fund in Williams v. Swensen, 93 Idaho 542, 467 P.2d 1 (1970). That case involved a county complaint against what would today be called an “unfunded mandate.” The legislature had imposed on counties the obligation of licensing motor vehicles, but had not provided funds to do so. Ada County withheld reasonable administrative costs before turning over the proceeds to the state. The Idaho Supreme Court, in issuing a writ of mandate requiring the county to turn over the funds, stated:

The plain meaning of Art. 7 § 17 of the Constitution is that all moneys collected from the enumerated sources must be used for the designated purpose and may not be diverted therefrom. The only exception to that mandate is that the legislature may authorize the funds to also be used for refunds or credits or to defray costs of collection and administration.

93 Idaho at 544, 467 P.2d at 3 (citing Moon v. Jonasson). Since one of the “enumerated sources” of money dedicated to the highway fund is “the proceeds . . . of any tax or fee for the registration of motor vehicles,” we are again faced with the question whether the \$10.00 bluebird license plate set-aside is such a “fee.”

The basic rule of statutory construction is that where the statute is not ambiguous, the language will be given its plain, ordinary meaning. Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 (1991). On the other hand, when a statute admits of two readings, the court will look at the entire statutory scheme to arrive at legislative intent, Lelifeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983), and, in particular, will ascertain the legislative intent by tracing the history of the statute. Mix v. Gem Investors, Inc., 103 Idaho 355, 647 P.2d 811 (1982).

The unexplained reference to a “fee” in Idaho Code § 49-417(2) is not sufficiently unambiguous that reasonable minds cannot differ over its interpretation. We therefore turn for guidance to the legislative history and the location of this statute within the context of chapter 4, title 49 of the Idaho Code.

At the outset, it is clear the Idaho Legislature did not intend that the \$10.00 bluebird license plate surcharge would be a “fee for the registration of motor vehicles.” In 1992, when this program was begun, the legislature enacted House Bill 695, which overhauled the entire structure of special license plate offerings. The intent was “to Make the Motor Vehicle Program 100% Self Supporting in Administrative Costs.” See H.B. 695, Statement of Purpose.

The result is a two-tiered system of special license plate programs. All automobile owners pay an annual basic **registration fee** to operate their vehicles, which fee currently varies from \$16.08 to \$36.48 depending on the age of the vehicle. Special plate programs in the first tier are for certain honorees, *e.g.*, disabled veterans, Purple Heart medalists, prisoners of war, Pearl Harbor survivors. These programs are exempt from additional charges and pay only the basic registration fee and a \$3.00 license plate fee.

A second tier of special plate programs is for personal license plates of various types. Participants in these programs pay the basic registration fee and, in addition, pay a \$25.00 **program fee** for issuance of the plates and an annual \$15.00 **program fee** for

renewal. These programs, as identified in the fiscal impact statement appended to H.B. 695, include “legislative, old timer, street rod, year of manufacture, radio amateur, national guard, and classic license plates.” According to the sponsors, this “change will allow ITD to recover the cost of administering the special plate program.”

Importantly for purposes of this opinion, this two-tiered system of charges in H.B. 695 was made applicable to all new special license plate programs as well:

The fees contained in this subsection shall be applicable to all new special plate programs. The initial program fee and the annual program fee shall be deposited in the state highway account and shall be used to fund the cost of administration of special license plate programs which are provided to the public as a personal alternative to the standard license plate requirements.

Idaho Code § 49-402(9).

The Idaho wildlife special plate program, H.B. 698, was enacted into law on April 8, 1992, as was H.B. 695, creating the two-tiered system of special plate charges outlined above. We must assume that the legislature fully understood the impact of the one law upon the other since the two were adopted the same day.

The Idaho wildlife special plate program requires participants to pay the basic registration fee and an additional “fee of thirty-five dollars (\$35.00) for the initial issuance of the plates, and twenty-five dollars (\$25.00) upon each succeeding annual registration.” Idaho Code § 49-417. Clearly, participants are paying the initial program fees of \$25.00 and the renewal program fees of \$15.00, plus a \$10.00 surcharge. The surcharge is in the nature of a contribution to nongame management and protection programs of the Idaho Department of Fish and Game.

This was certainly the understanding of those who sponsored the legislation. Wayne Melquist, State Non-Game Manager of the Department of Fish and Game, explained that the purpose of the program was to offset “the decline in tax return checkoff contributions” that the department had been experiencing. *See Minutes of Senate Resources and Environment Committee*, p. 3, March 20, 1992.

Representative John Gannon, the bill’s sponsor, testified before the Senate Transportation Committee on March 26, 1992 that H.B. 698:

[P]rovides for a special Idaho wildlife motor vehicle license plate, and that a portion of the fee for such a plate [would] be used in nongame management and protection. He explained it was hoped that 10,000 plates

would be sold and \$100,000 earned, the funds to go for various nongame activities.

We conclude that the \$10.00 surcharge for the bluebird license plate program is not part of “the fees contained in this subsection”—*i.e.*, \$25.00 issuance and \$15.00 renewal fees mandated by Idaho Code § 49-402(8)¹ to support the administration of special license programs that involve personal license plates. Nor is it part of the basic registration fee for motor vehicles set forth in Idaho Code § 49-402(1). We believe a reviewing court would probably conclude that the surcharge forms no part of “the proceeds . . . from any tax or fee for the registration of motor vehicles” and thus does not violate the prohibition of art. 7, sec. 17 of the Idaho Constitution, prohibiting the transfer or diversion of such fees away from highway projects. Such a conclusion would give full effect to the basic mandate that when a statute admits of two possible constructions, one of which will uphold its validity and the other of which will render it unconstitutional, a court must adopt that construction which is consistent with the constitution. State v. Groseclose, 67 Idaho 71, 75, 171 P.2d 863, 867 (1946).

However, we must emphasize that because the language of Idaho Code § 49-417 setting up the Idaho wildlife special plate program is ambiguous, a court could conclude the \$10.00 contribution is, in fact, a fee and hold the statute unconstitutional. For this reason, we strongly suggest that the legislature clarify this matter so that the program will not be subject to attack at a future date. Expressly designating the \$10.00 as a contribution in the statute, instead of referring to it as part of the “fee,” would go a long way in allaying concerns.

If you have any questions, please do not hesitate to contact me.

Sincerely,

JOHN J. MCMAHON
Acting Chief
Business Regulation Division

¹ Note that the statutes enumerating the special license fee programs all cross reference Idaho Code § 49-402(9). However, the legislative directive governing program fees is now codified as Idaho Code § 49-402(8). The error arose in 1993 when Idaho Code § 49-402 was amended and one section was deleted. The cross references were not brought into conformity.