

August 24, 1995

The Honorable Donna Jones
Idaho State Representative, District 9
1911 First Avenue South
Payette, ID 83661

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

Dear Representative Jones:

Your letter of August 14, 1995, requests an opinion of the Attorney General on the following question:

Can the Governor's Housing Committee use the interest income generated from the investment of funds in the Governor's Residence Account to pay the Governor a housing allowance, or is additional legislation required to authorize the investment and payment of a housing allowance to the Governor?

We conclude that, under the current law, funds in the Governor's Residence Account cannot be used to pay the Governor a housing allowance and that new legislation would be required to accomplish this goal.

I.

HISTORY OF LEGISLATION

In order to determine the answer to the issues presented, a review of the statutes involved and the overall legislative history will be required.

In 1977, the Idaho Legislature enacted House Bill 275. 1977 Idaho Sess. Laws 903. The statement of purpose read as follows:

The purpose of this bill is to provide for disposition of the current executive residence upon the completion of a new residence and to provide for acceptance of gifts and endowments for the executive residence. The bill also creates an advisory committee to advise on the construction and furnishing of the executive residence.

(Emphasis added.)

The bill provided for the creation of a dedicated fund called the Governor's Residence Account. This account was to consist of money from gifts, grants or endowments "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 at 903. The money in the account was to be "perpetually appropriated and set apart for the purposes for which the moneys are received" *Id.* at 903. Further, spending from such account could only be authorized by the Permanent Building Fund Advisory Council and the Division of Public Works.

In 1989, the legislature again addressed the issue of the Governor's Residence Account in Senate Bill 1148. 1989 Idaho Sess. Laws 898. In this bill, the legislature authorized and directed the State Land Board to act as custodian for the Governor's mansion. The Department of Lands was to dispose of the existing property by sale, and any moneys realized from the sale were to be deposited in the Governor's Residence Account. The bill created an agency asset fund in the State Treasury designated as the Governor's Residence Account. As in the 1977 act, the moneys in such account were perpetually appropriated for the purposes designated in the act. Further, any unused money from the 1988 Governor's Office budget was also transferred into the Governor's Residence Account.

The 1989 act contains identical language to the 1977 act as to the purposes of the legislation but goes on to add the new purposes of site acquisition, planning and construction of a Governor's residence. Section 3(b) of the act reads, in part, as follows:

The Division of Public Works is authorized to . . . use all gifts and donations . . . for use in the Governor's residence.

In addition to the stated purposes in the legislation, the minutes of the House State Affairs Committee on March 20, 1989, regarding Senate Bill 1148 state:

An account will be created (Governor's Residence Account) in the State Treasury to deposit money from the sale of the property and all other gifts and donations received toward the project of a new residence.

(Emphasis added; parenthetical language in original.)

In 1990, the Idaho Legislature adopted Senate Bill 1647. 1990 Idaho Sess. Laws 917. This act appropriated \$778,800 from the Permanent Building Fund into the Governor's Residence Account.

In 1993, the Idaho Legislature adopted House Bill 442. 1993 Idaho Sess. Laws 1400. Section 8 of this act appropriated \$150,000 from the Governor's Residence Account for the purposes of "planning and designing an Executive Residence." In addition, the Executive Residence Committee was charged with the duty of reviewing the current site and investigating if any other site or structure would suffice as a Governor's residence. The committee was also to recommend appropriate designs for the new executive residence.

As you are aware, most recently in 1995, the Idaho Legislature adopted Senate Bill 1234. 1995 Idaho Sess. Laws 1281. This bill provided that the Governor's Residence Account be set over to the Department of Administration and be "set apart for the purposes of acquisition and maintenance of a Governor's residence . . ." (Emphasis added.) Further, "the department shall use moneys in the account for any purpose related to the acquisition or construction or maintenance of a Governor's residence." (Emphasis added.)

The statement of purpose attached to Senate Bill 1234 contained the following language: ". . . appropriate money to the Governor's Resident Account for expenditure as directed by the committee for the purpose of acquiring and maintaining a Governor's residence." (Emphasis added.)

With the above legislative history in mind, we turn to the issue of statutory construction.

II.

ANALYSIS

A. Does the Current Statute Provide for the Payment of a Housing Allowance?

The first question is whether the current law, as contained in Senate Bill 1234, permits the investing of moneys in the Governor's Residence Account and using the interest income from such investments to pay a Governor's housing allowance.

If a statute is not ambiguous, the language will be given its plain and ordinary meaning. Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 (1991); George W. Watkins Family v. Messenger, 117 Idaho 588, 790 P.2d 369 (Ct. App. 1989). Further, the courts must give force and effect to the legislature's intent and purpose, Sherwood, 119 Idaho 246; Sweitzer v. Dean, 118 Idaho 568, 798 P.2d 27 (1990).

A plain reading of the language of Senate Bill 1234 states that the purposes for which the Governor's Residence Account funds may be expended are for the "acquisition

and maintenance of a Governor's residence" and for purposes "related to the acquisition or construction or maintenance of a Governor's residence." This reading is augmented by the statement of purpose which contains language identical to that contained in the body of the legislation. Based on this unambiguous language, the plain and ordinary meaning of the law is that the money in the Governor's Residence Account is to be used to acquire, construct and maintain a Governor's residence.

A review of the legislative committee minutes regarding Senate Bill 1234 also supports the conclusion that moneys in the Governor's Residence Account are to be used for the purposes listed above. On February 27, 1995, the Senate State Affairs Committee discussed whether to send RS04958, which eventually became Senate Bill 1234, to print. The committee minutes read as follows:

This legislation will authorize a committee consisting of five appointed members to appropriate money to the Governor's resident account for expenditure for the purposes of acquiring and maintaining a Governor's residence. Moneys used will come from a dedicated fund for purchase of Governor's residence.

(Emphasis added.)

Further, on March 6, 1995, the Senate State Affairs Committee discussed Senate Bill 1234 and sent the bill to the floor of the Senate with a do pass recommendation. Senator Twiggs, the sponsor of the bill, explained to the committee that the process was not one to "be used 'building a mansion' or even spending the entire \$1M in the fund but rather one to buy a residence appropriate to house our future governors." (Emphasis added.) On March 15, 1995, the House of Representatives State Affairs Committee considered Senate Bill 1234 and once again it is noted in the committee records that the purposes of the legislation are for "acquiring and maintaining a governor's residence."

The doctrine of *expressio unius est exclusio alterius* (the expression of one is the exclusion of all others) applies to Senate Bill 1234. Local 494, etc. v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978). Where the legislature has expressly stated the purposes of the money in the Governor's Residence Account, all other purposes for the money are excluded.

Thus, the sole authorized purposes for the use of the money in the Governor's Residence Account are acquisition, construction and maintenance of a Governor's residence. As such, it would not be lawful to simply invest the funds and pay a housing allowance directly to the Governor. Therefore, additional legislation would be required to authorize such investment and payment.

B. Does the Prior Law Provide for a Different Result?

Since the current law as enacted by Senate Bill 1234 was an augmentation of the prior pieces of legislation described above, we also address the result that would follow under the prior legislation.

In the 1977 legislation, the Permanent Building Fund Advisory Council and Division of Public Works were to authorize the expenditure of the funds for the “purpose of decorating, equipping, completing and/or furnishing the Governor’s residence and/or landscaping the grounds surrounding such residence.” The statement of purpose for the bill states that the current executive residence is to be disposed of “upon completion of a new residence” and that the Advisory Committee is to advise on “the construction and furnishing of the executive residence.” Further, the fact that the Permanent Building Fund Advisory Council and the Division of Public Works were the designated bodies to authorize the spending points to the intent that the project was for a permanent structure.

In the 1989 legislation, the language is the same and only adds to the stated purposes to include site acquisition, planning and construction of a Governor’s residence.

The 1990 and 1993 appropriation bills are not very expressive of their stated purposes. However, the 1993 legislation states that the \$150,000 is for the purpose of “planning and designing an executive residence.” Section 8 of that legislation states that the “funds may be expended . . . for professional services of an architect, engineer or consultant as may be required by the Executive Residence Committee.”

A summation of all of the prior legislation once again leads to the conclusion that the Governor’s Residence Account is to be used for the site acquisition, planning, construction, decorating, equipping, completing, furnishing, landscaping, planning and designing of an executive residence. Nowhere in the legislative history is there any authority to invest the funds and use the income therefrom to pay a housing allowance.

C. The Legislature Could Provide a Housing Allowance

The legislature has the authority to provide a housing allowance or expenditure for the Governor outside of the Governor’s Residence Account. In the absence of such legislation, it cannot be implied elsewhere.

In 1995, with Senate Bill 1090, 1995 Idaho Sess. Laws 56, the legislature attempted to appropriate a housing allowance for the Governor. The fiscal note for Senate Bill 1090 stated, in part, “Governor’s Residence: increase the General Fund by \$12,000 to provide living expenses for the Governor.” Further, the legislation, beginning at line 24, provided money for the Governor’s residence in his operating expenditures.

The amount was eventually amended to \$22,000, and the bill passed both houses of the Idaho Legislature. However, on February 23, 1995, Governor Batt line-item vetoed line 24 of the legislation, striking the \$22,000 living allowance from the Governor's Office budget. The legislature did not override the veto.

This bill illustrates that the legislature can specifically provide for a housing allowance for the Governor if it chooses to do so. Since the legislature has chosen to express that the Governor's Residence Account is for purposes other than a housing allowance, then the housing allowance should not be read into the purposes of the Governor's Residence Account. Once again, the doctrine of *expressio unius est exclusio alterius* (the expression of one is the exclusion of all others), Local 494, etc. v. City of Coeur d'Alene, 99 Idaho 630, 586 P.2d 1346 (1978), applies equally to Senate Bill 1234 as it does to Senate Bill 1090. Since Senate Bill 1234 expressed the purposes of acquiring, maintaining and constructing the Governor's residence, it excludes the purpose of providing a housing allowance. Since Senate Bill 1090 expressed the purpose of providing a Governor's housing allowance, the 1995 legislature clearly understood that separate legislation was necessary in order to accomplish this result.

III.

CONCLUSION

Based on the above analysis, the moneys appropriated to the Governor's Residence Account cannot be invested and the proceeds used to pay a living allowance to the Governor. Absent additional legislation, the funds must be used for the acquiring, construction and maintenance of a residence for the Governor. This reading of the current law is consistent with the legislative history and prior legislative enactments on the same subject. The legislature could, if it so chose, provide a living allowance for the Governor either by appropriating funds from the Governor's Residence Account for this purpose or by direct appropriation.

I hope this adequately addresses your inquiry. If you desire further information or assistance, please contact me.

Very truly yours,

KEVIN D. SATTERLEE
Deputy Attorney General