

November 23, 1998

Keith Bumsted, Acting Director
Department of Transportation
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**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Design of the Idaho Snowskier Special License Plate

Dear Mr. Bumsted:

This letter is in response to your letter dated November 5, 1998 requesting legal guidance on issues related to the proposed issuance of the Idaho snowskier special license plate ("snowskier plate"). You have asked whether the proposed design of the snowskier plate complies with Idaho Code and whether the Idaho Transportation Department ("ITD") took the appropriate steps to approve the snowskier plate.

It is my conclusion that the proposed design of the snowskier plate does comply with the relevant provisions of Idaho Code and that the ITD took appropriate measures to approve the snowskier plate in accordance with the provisions of Idaho law.

I.

ANALYSIS

The proposed design of the snowskier plate features a downhill skier on a red, white and blue background. The registration numbers on the plate are blue. At the top of the plate are the words "Ski Idaho" and at the bottom are the words "Winter Wonderland." The term "Famous Potatoes" does not appear on the proposed plate. At the root of this inquiry is whether the words "Famous Potatoes" must appear on the snowskier plate.

My response to the questions posed requires the analysis and interpretation of Idaho Code §§ 49-402C, 49-419 and 49-443. Idaho Code § 49-443 is a general provision that establishes the basic requirements for the form and content of Idaho license plates. Idaho Code § 49-402C addresses the "special license plate programs"¹ and standardizes the appearance of any new or redesigned special license plate authorized or redesigned after July 1, 1998. (Effective as of July 1, 1998, 1998 Idaho Session Laws, H.B. 699, as amended, ch. 405, § 1.) Idaho Code § 49-419 establishes the specific requirements for

the snowskier plate. (Effective January 1, 1999, 1998 Idaho Session Laws, H.B. 581, Ch. 129, § 2.)

A. Does the Proposed Design of the Snowskier Plate, Without the Term “Famous Potatoes,” Comply with the Requirements of Idaho Code?

Each of the statutes referenced above discusses, to varying degrees, the design and appearance requirements for Idaho license plates. Idaho Code § 49-443, the most general of the three provisions, requires that all Idaho license plates issued on or after January 1, 1992 have a color and design that is comparable to the color and design of the statehood centennial license plate. That is, the plates must have blue numbers on a multicolored red, white, and blue background. Idaho Code § 49-443(1). The plate must have the registration number for the vehicle and the word “Idaho” on the plate. *Id.* In addition, “[e]ach license plate must bear upon its face the inscriptions ‘Famous Potatoes’² and ‘Scenic Idaho.’” *Id.* These requirements have remained unchanged since the statute was first enacted by the 1992 legislature.

Idaho Code § 49-402C, which was enacted by the 1998 Idaho Legislature and took effect July 1, 1998, is intended by the legislature to standardize the appearance of new or redesigned special license plates so that Idaho plates are readily identifiable and more cost-effective. Idaho Code § 49-402C(1). Accordingly, any new or redesigned special license plate that is authorized or redesigned after July 1, 1998, must use a red, white, and blue background, comparable to Idaho’s statehood centennial plates. Idaho Code § 49-402C(2). Section 49-402C requires that the word “Idaho” be on the plate, but, in contrast to § 49-443, § 49-402C specifically allows for the omission of the term “Scenic Idaho” from the plate. Idaho Code § 49-402(2)(b), (c). Section 49-402C makes no provision for including the term “Famous Potatoes.” It does require that “[n]o slogan shall be used that infringes upon, dilutes or compromises, or could be perceived to infringe upon, dilute or compromise, the trademarks of this state of Idaho, including, but not limited to ‘Idaho Potatoes[®],’ ‘Grown in Idaho[®],’ ‘Famous Idaho Potatoes[™],’ or ‘Famous Potatoes[™].’” Idaho Code § 49-402C(2)(d).

The third statutory provision, Idaho Code § 49-419, sets forth the requirements for the snowskier plates. Consistent with the provisions of sections 49-443 and 49-402C, section 49-419 requires that the plate be comparable to the Idaho statehood centennial plate, and the word “Idaho” must appear on the plate. However, the provision is completely devoid of any reference to “Famous Potatoes.” Nothing in the statute indicates that “Famous Potatoes” must appear on the plate. The provision does state, however, that the design and slogans on the plate must be acceptable to the Idaho Ski Areas association and approved by the Idaho Transportation Department. Idaho Code § 49-419(4).

The construction and interpretation of statutes begins with the literal words of the statute. City of Boise v. Industrial Comm'n, 129 Idaho 906, 935 P.2d 169 (1997). If the statute is unambiguous, there is no need for the application of the rules of construction, and the language of the statute is to be given its plain and ordinary meaning. *Id.* In construing statutes, the goal is to ascertain and give force and effect to the clear and expressed intent of the legislature, based on the whole act and every word contained therein. Ada County v. Roman Catholic Diocese, 123 Idaho 425, 849 P.2d 98 (1993). In determining legislative intent, in addition to looking at the language of the statute, consideration should be given to the reasonableness of proposed interpretations and the policy behind statutes so that all applicable sections can be construed together. State v. Seamons, 126 Idaho 809, 892 P.2d 484 (1995). Legislative intent can also be ascertained from the legislative history of the statute. Leliefeld v. Johnson, 104 Idaho 357, 659 P.2d 111 (1983). However, unless the interpretation is contrary to purposes clearly indicated, ordinary words are to be given their ordinary meaning. Ada County, 123 Idaho 425, 849 P.2d 98 (1993).

It is clear from the plain language of the above-referenced statutes that the over-all design of the snowskier plate is in compliance with Idaho law. The express terms of all three of the statutes addressed above require that the snowskier plate contain the term “Idaho” and be of comparable appearance and design to the Idaho statehood centennial plate. Idaho Code §§ 49-402(C)(2), 49-419(4) and 49-443(1). The snowskier plate, as designed, satisfies these requirements. The plate has the word “Idaho” at the top of the plate, and it has blue numbers on a red, white, and blue background, similar to the statehood centennial plate. The snowskier plate design satisfies the legislature’s explicit statement of intent in Idaho Code § 49-402C that special plates be readily recognizable as Idaho plates. Idaho Code § 49-402C(1).

The more difficult question is whether the snowskier plate’s design, which does not include the term “Famous Potatoes,” complies with the requirements of Idaho Code. I conclude that it does. Of the three statutes discussed above, only section 49-443 specifically requires that the term “Famous Potatoes” be on a plate. The other two statutes do not address whether the term must be on the plate or whether it may be omitted. In construing separate statutes that deal with the same subject matter, the statutes should be construed harmoniously, if possible, to further legislative intent. Seamons, 126 Idaho 809, 892 P.2d 484 (1995).

The legislature set up the license plate statutes so that the provisions would be read together. This intent is evidenced by section 49-402C’s cross-reference to section 49-443.³ Section 49-419 specifically refers to section 49-443 to specify the requirement that all new and redesigned special plates have the same color scheme and general appearance. Idaho Code § 49-402C(2). After establishing the general appearance requirements, section 49-419 then sets forth additional requirements for what must be, what may be, and what must not appear on the special plates. The special license plates

requirements are independent from the otherwise standard requirements of the basic Idaho license plate. By contrast to section 49-443's general requirements, section 49-402C specifically requires that for special plates:

- (a) The identification of the county shall be omitted;
- (b) The word "Idaho" shall appear on every plate;
- (c) The inscription "Scenic Idaho" may be omitted;
- (d) No slogan shall be used that infringes upon, dilutes or compromises, or could be perceived to infringe upon, dilute or compromise, the trademarks of the state of Idaho, including, . . . "Famous PotatoesTM,"

Idaho Code § 49-402C(2) (emphasis added). Reference to the words "Famous Potatoes" is absent from the list. The legislature certainly knew how to expressly state what must be and what must not be on the special plates. Had the legislature wanted to specifically exclude or include "Famous Potatoes" on the plates, it would have so stated. Without a clear statement as to whether "Famous Potatoes" is to be omitted from or included on the snowskier plate, it is a reasonable interpretation to conclude that the decision to include or exclude the term is a discretionary one for the ITD.

Further evidence that the legislature could have required "Famous Potatoes" to be on the plates if it so chose, is contained in Idaho Code § 49-418A (1997). In that provision, the legislature required that the Idaho public college and university plates have the standard red, white, and blue background, just as in the snowskier plate provision. But, in addition, the legislature specifically required that "the word 'Idaho' and 'Famous Potatoes' shall appear on every [public college and university] plate." Idaho Code § 49-418A (emphasis added). No comparable provision or requirement exists for the snowskier plate. Idaho Code § 49-419. It is contrary to the rules of statutory interpretation to read additional terms into the statute that were not included or intended by the legislature. City of Boise v. Industrial Comm'n, 129 Idaho 906, 909, 935 P.2d 169, 172 (1997) (holding that the legislature intended different interpretations and different results where it included a provision in one section, but not in another).

This interpretation is further supported by a review of the legislative history of section 49-402C. During the 1998 legislative session, the provision was amended before being enacted. Prior to the amendments, the bill contained a provision stating that "the inscriptions 'Famous Potatoes' and 'Scenic Idaho' may be omitted." During the amendment process, the legislature deleted the reference to "Famous Potatoes" and the current subsection (2)(d) was added regarding the prohibitions on the use of Idaho's

trademarks. The removal of the provision indicates that the legislature deliberately omitted any specific reference to the term in the statute.

This legislative history should be read in conjunction with the legislative history of section 49-419 that was enacted during the same 1998 legislative session. During the legislative committee meetings on H.B. 581 (Idaho Code § 49-419), discussions were held on whether the term “Famous Potatoes” would be on the snowskier plate. Among the suggestions presented to the senate committee was the option of either having “Famous Potatoes” on the plate or not to have any other slogan that would “play off the Famous Potatoes slogan.” During the legislative session, a prototype for the snowskier plate was presented to the legislature, showing the phrase “Famous Skiing” in place of “Famous Potatoes.” The concerns raised over that proposed design and the language used addressed what effect the legislation would have on an on-going trademark lawsuit, not over the absence of the term “Famous Potatoes.” The legislature made its choice between the two options and chose to amend section 49-402C to include additional protections for Idaho’s trademark and not to require that “Famous Potatoes” be on the snowskier plate.

Further guidance on this issue is found in the statutory framework of the other special license plate programs. Idaho Code authorizes 21 special license plate programs other than the snowskier plate program. Of the 21 special plates, 17 do not contain the term “Famous Potatoes.” Of those 17, four special plates were designed after or during the same legislative session where section 49-443 became law in 1992. Despite section 49-443’s requirement that all plates after January 1, 1992 “shall bear upon its face the inscriptions ‘Famous Potatoes’ and ‘Scenic Idaho,’” the veteran plate, the timber plate, and the wildlife plates (both the bluebird plate and the elk plate) do not contain the term “Famous Potatoes.” Of further note is that in 1998, all of the special plate provisions were amended by the Idaho Legislature. If the legislature was concerned with any or all of the special plates that do not use the term “Famous Potatoes,” it easily could have amended those provisions during the 1998 legislative session. Likewise, if the legislature intended to change the ITD’s current practice of issuing special plates without the term “Famous Potatoes,” it would have made a clear declaration of its intent either when it enacted section 49-443 in 1992 or when it amended all of the special plate provisions in 1998. No such declaration of intent or amendment to the relevant provisions was made.⁴ Instead, the legislature’s intent in enacting section 49-443, as expressly stated in language of Idaho Code § 49-402C(1), is as follows:

It is the intent of the legislature that special license plates issued by the [Idaho Transportation] department be readily recognizable as plates from the state of Idaho without losing the uniqueness for which the special plate was designed and purchased. In addition, the legislature finds that the [Idaho Transportation] department can operate in a more efficient, cost-effective manner by conforming special plates to a basic color and design.

Idaho Code § 49-419(1). There is no indication in this statement of intent that the legislature wanted to preserve the “Famous Potatoes” slogan on the special plates. Rather, the stated intention of the legislature was to establish a uniform and standardized appearance for the special plates and allow for the more efficient operation of the ITD.

There is logic in the legislature’s requirements of what may be included or excluded from the special plates. Generally, special plates have different slogans, designs or images on the plate. *See* Idaho Code § 49-404A (requiring the word “RESERVIST” along the bottom edge of the plate); Idaho Code § 49-408 (requiring the inscription “Street Rod,” the term “Idaho,” and a picture of a 1929 highway roadster on the plate); Idaho Code § 49-415 (requiring the words “Former Prisoner of War” and a declaration of the period of service on the plate); Idaho Code § 49-415B (requiring “Pearl Harbor Survivor” on the plate); Idaho Code § 49-418 (requiring the designation of the applicable branch of the military, the word “VETERAN,” and the name of the conflict or war period on the plate). If all of the language required in section 49-443 were placed on the plates along with the special slogans and images for the respective special plate, the plate would be too cluttered to be readable or useful. The legislature clearly recognizes that there is limited space on a license plate and attempted to keep the special plates uncluttered and readily identifiable as an Idaho license plate. *See* Idaho Code § 49-419 (requiring the omission of the county designator in order to provide room for designs and slogans for the snowskier plate).

Based on the above analysis of the relevant statutes, the legislative history, and the legislative intent, the proposed design of the snowskier plate satisfies the intent of the legislature and otherwise complies with the provisions of Idaho Code.

B. Did the ITD Complied with the Provisions of Idaho Code in Approving the Snowskier Plate?

Idaho Code § 49-419 provides that the designs and slogans to be placed upon the snowskier plate are to be acceptable to the Idaho Ski Areas Association and approved by the ITD. Likewise, the official Statement of Purpose, published with H.B. No. 581, which enacted Idaho Code § 49-419, states that the legislation authorizes the ITD to issue the snowskier license plate.⁵ In going through the approval process of the snowskier plate design, the ITD sought and obtained the approval of the Idaho Legislature, the Idaho Ski Areas Association, and the Office of the Governor. The ITD fully complied with the requirements of Idaho Code § 49-419 in giving approval of the proposed design of the snowskier plate.

CONCLUSION

The Idaho snowskier plate meets the design requirements of Idaho Code, and the process through which the design was approved was also in compliance with the provisions of Idaho law.

Very truly yours,

TERRY E. COFFIN
Division Chief
Contracts & Administrative Law Division

¹ In addition to the snowskier plate, the Idaho Legislature has authorized 21 other special license plate programs. Idaho Code § 49-403 (disabled veterans plates); Idaho Code § 49-403A (purple heart recipient license plates); Idaho Code § 49-404 (national guard member license plates); Idaho Code § 49-404A (members of the armed forces reserve license plates); Idaho Code § 49-405 (radio amateurs license plates); Idaho Code § 49-406 (Idaho old timer license plates); Idaho Code § 49-406A (Idaho classic license plates); Idaho Code § 49-407 (year of manufacture plates); Idaho Code § 49-408 (street rod license plates); Idaho Code § 49-409 (personalized license plates); Idaho Code § 49-410 (special license plates and cards for persons with disabilities); Idaho Code § 49-414 (legislative license plates); Idaho Code § 49-415 (former prisoner of war license plates); Idaho Code § 49-415A (Congressional Medal of Honor license plates); Idaho Code § 49-415B (Pearl Harbor survivor license plates); Idaho Code § 49-416 (statehood centennial license plates); Idaho Code § 49-417 (Idaho wildlife license plates); Idaho Code § 49-417A (Idaho timber license plates); Idaho Code § 49-418 (veterans license plates); Idaho Code § 49-418A (Idaho public college and university license plates); Idaho Code § 49-420 (Idaho snowmobile plates).

² The use of Idaho's trademarks, such as "Famous Potatoes," may be authorized by statute, *see* Idaho Code §§ 49-418A and 49-443, or by the Idaho Potato Commission, Idaho Code § 22-1207 (1998) (granting the Idaho Potato Commission the power to authorize the use of or prevent the unauthorized use of Idaho potato trademarks or trade certificates); *see also* IDAPA 29.01.02, *et seq.*; Idaho Potato Comm'n v. Washington Potato Comm'n, 410 F. Supp. 171 (D. Idaho 1975).

³ Idaho Code § 49-402C contains a typographical error. The provision references Idaho Code § 49-433, when the reference should be to Idaho Code § 49-443.

⁴ By contrast, when the legislature authorized the snowmobile special license plate program in 1998 (virtually at the same time that it enacted the snowskier plate program), it made a specific entry in the Senate Journal, declaring:

It is the intent of the Legislature that the final design of this specialty plate not infringe upon, dilute or compromise the trademarks of the State of Idaho. . . . It is further the intent of the Legislature that the final design of the plate include the phrase "Famous Potatoes™" and conform to the standardized color format of the State of Idaho.

No similar language was inserted in the snowskier plate legislation.

⁵ An earlier version of the Statement of Purpose stated that the final design of the snowskier plate was to be agreeable to the Idaho Ski Areas Association (ISAA) and the Idaho Potato Commission (IPC). However, the references to the ISAA and the IPC were not included in the Statement of Purpose published with the bill, while the statement in the code section itself regarding the approval of the ISAA and the ITD remained in the law.