

ATTORNEY GENERAL OPINION NO. 01-1

To: James Spalding
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Per Request for Attorney General's Opinion

You have requested an Attorney General's Opinion concerning the kinds of sales that Correctional Industries is permitted to make. This opinion addresses the question you have presented.

QUESTION PRESENTED

May Correctional Industries sell a prison-made product to a retail or wholesale establishment within the state that:

(1) is not engaged in the business of selling or servicing the same kind of product that it purchases from Correctional Industries; or

(2) does not intend to resell the prison-made product?

CONCLUSION

Correctional Industries may sell its products to retail or wholesale establishments within the state only where it is intended that the products will eventually be offered for resale to the general public. Therefore, Correctional Industries products may not be sold to retail or wholesale establishments that: (1) are not in the business of selling such products, or (2) do not intend to sell the Correctional Industries products.

ANALYSIS

The operations of Correctional Industries are controlled by the Correctional Industries Act, Idaho Code §§ 20-401, *et seq.* The controlling statutes here are Idaho Code §§ 20-413 and 20-414, which are as follows:

20-413. Goods and services for government, nonprofit organizations, and public use.—Contracts.—The board is hereby authorized and empowered to cause the inmates in the state prison to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now or may

hereafter be needed by any public institution or agency of the state or any political subdivision thereof, including but not limited to counties, districts, municipalities, schools, nonprofit organizations, and other public use. The board may cause the inmates to be employed in rendering such services or producing and manufacturing such articles, materials, and supplies as are now or may hereafter be needed for use by the federal government for any department, agency or corporation thereof. The board may contract to sell products manufactured by correctional industries to retail or wholesale establishments within the state. The board or its designated agent may enter into contracts for the purposes of this article.

The board may contract with other state and federal penal institutions and with out-of-state governmental entities for the production, manufacture, exchange, sale, or purchase of goods, wares and merchandise manufactured or produced wholly or in part by inmates of the Idaho state penitentiary or of any state or federal penal institution.

20-414. Disposition of products.—All articles, materials, and supplies, produced or manufactured under the provisions of this act, shall be solely and exclusively for public or nonprofit organization use and no article, material, or supplies, produced or manufactured under the provisions of this chapter shall ever be sold, supplied, furnished, and exchanged, or given away for any private use or profit, except as allowed by the preceding section. However, by-products and surpluses of agricultural and animal husbandry enterprises may be sold to private persons, at private sale, under rules prescribed by the board of correction.

(Emphasis added.)

Thus, with the exception of the agricultural and husbandry by-products and surpluses referred to in Idaho Code § 20-414, Correctional Industries products may be supplied to government agencies and non-profit organizations, and may also be sold to “retail or wholesale establishments within the state.” All other distribution of such products is prohibited.

The answer to the question presented depends upon the meaning of “retail or wholesale establishments” in the context of these statutes. In construing legislative acts, we must ascertain, from a reading of the entire act, the purpose and intent of the legislature. George W. Watkins Family v. Messenger, 118 Idaho 537, 539, 797 P.2d 1385 (1990). The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. Corder v. Idaho Farmway, Inc., 133 Idaho 353, 358, 986 P.2d 1019 (Ct. App. 1999). We should aim to give statutes a sensible construction that will effectuate the legislative intent and,

if possible, avoid an absurd conclusion. Hartman v. Meier, 39 Idaho 261, 266, 227 P. 25 (1924); Smith v. Smith, 131 Idaho 800, 802, 964 P.2d. 667 (Ct. App. 1998). Where a statute is ambiguous, the legislative intent should be ascertained by examining factors such as the statute's language, the reasonableness of a proposed interpretation, and the policy underlying the statute. Struhs v. Protection Technologies, Inc., 133 Idaho 715, 718, 992 P.2d 164 (1999).

Applying these principles to the statutory language in question here leads to the conclusion that Correctional Industries products may be sold to retail or wholesale establishments only where it is intended that the products will be resold by those establishments. A super-literal reading of the language of Idaho Code § 20-413 might lead to the conclusion that a Correctional Industries product may be sold to a retail or wholesale establishment for any purpose whatever, even if that establishment is the ultimate consumer of the product. This, however, would appear to be an absurd result that is entirely inconsistent with the purpose of the relevant statutes. One of the purposes of Idaho Code §§ 20-413 and 20-414 is to limit the transfers or sales of Correctional Industries products. There is no apparent reason for allowing only retail and wholesale establishments, as opposed to all other private businesses or individuals, to purchase such items directly from Correctional Industries for their own use. On the other hand, it would be reasonable and consistent with the purpose of the statutes to allow retail and wholesale establishments to purchase Correctional Industries products for the purpose of resale. This would allow at least a portion of the private sector to share in the profits from the ultimate sale of such products to the general public.

This interpretation of the statute is supported by the legislative history. The statutes in question were originally enacted in 1974 as part of the Correctional Industries Act. 1974 Idaho Sess. Laws 1096, 1100-01. As then adopted, Idaho Code § 20-413 provided in part, "The [correctional industries] commission may contract to sell products manufactured by correctional industries to retail establishments within the state for resale to the general public." (Emphasis added.) 1974 Idaho Sess. Laws 1100. Thus, it was clear that the original legislative intent was to allow the sale of Correctional Industries products only where the products would be resold to the general public.

In 1978, the legislature adopted Senate Bill No. 1405, which added the words "or wholesale" following the word "retail," and which struck the words "for resale to the general public." The Statement of Purpose accompanying the bill was as follows:

The purpose of this act is to amend Section 20-413 to allow the Correctional Industries Commission to contract with wholesalers within the state for the sale of products manufactured by Correctional Industries. Present law allows the Commission to contract only with retailers.

The testimony offered in committee in support of the bill was to the same effect. For instance, the minutes of the hearing on the bill before the House State Affairs Committee state:

Don Erickson [of the Department of Correction] spoke to the committee on this bill and said the purpose of this act is to amend Section 20-413 to allow the Correctional Industries Commission to contract with wholesalers within the state for the sale of products manufactured by Correctional Industries. He said present law allows the Commission to contract only with retailers. He further stated benefits would be attained by allowing the Correctional Industries Commission to deal with wholesalers as well as retailers.

Minutes of House State Affairs Committee, March 4, 1978; *see also*, Minutes of Senate State Affairs Committee, January 19, 1978; Minutes of Senate Commerce and Labor Committee, February 1, 1978.

Since the only purpose underlying Senate Bill 1405 was to allow for the sale of Correctional Industries products to wholesalers, it follows that the language “for resale to the general public” was dropped simply to allow those wholesalers to resell the products to retailers. Nothing in the legislative history suggests that the deleted language was dropped in order to permit retail and wholesale establishments to apply the products to their own use. Therefore, it must be concluded that the legislative intent remained to allow the sale of Correctional Industries products to private businesses only for ultimate resale to the general public.

Applying this conclusion to the specific question you have asked, it is our opinion that Correctional Industries products may not be sold to businesses that are not engaged in the wholesale or retail selling of such products, or that do not intend to resell the products.

AUTHORITIES CONSIDERED

1. Idaho Code:

Idaho Code §§ 20-401, *et seq.*
Idaho Code § 20-413.
Idaho Code § 20-414.

2. Idaho Session Laws:

1974 Idaho Sess. Laws 1096.
1974 Idaho Sess. Laws 1100.

1974 Idaho Session Laws 1101.

3. Idaho Cases:

Corder v. Idaho Farmway, Inc., 133 Idaho 353, 986 P.2d 1019 (Ct. App. 1999).

George W. Watkins Family v. Messenger, 118 Idaho 537, 797 P.2d 1385 (1990).

Hartman v. Meier, 39 Idaho 261, 227 P. 25 (1924).

Smith v. Smith, 131 Idaho 800, 964 P.2d. 667 (Ct. App. 1998).

Struhs v. Protection Technologies, Inc., 133 Idaho 715, 992 P.2d 164 (1999).

4. Other Authorities:

Minutes of House State Affairs Committee, March 4, 1978.

Minutes of Senate State Affairs Committee, January 19, 1978.

Minutes of Senate Commerce and Labor Committee, February 1, 1978.

DATED this 12th day of January, 2001.

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Analysis by:

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