STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

November 29, 2005

The Honorable John W. Goedde
Idaho State Senate
525-B W. Harrison Ave.
Coeur d'Alene, ID 83814

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

QUESTION PRESENTED

Is an administrative rule, which conflicts with a clear statement of legislative intent, valid if it is not in conflict with the language of the statute upon which the rule is based?

SHORT ANSWER

Legislative intent, even if it is in the form of a journal entry, does not have the force and effect of law. An administrative rule is not rendered invalid if it conflicts with legislative intent, provided it conforms to the language of the statute upon which the authority of the rule rests.

ANALYSIS

House Bill 331 ("H 331"), after having first been passed by the Idaho House of Representatives, was passed by the Idaho State Senate on March 29, 2005. The bill passed unanimously. After passage of the bill, the Senate then granted, by unanimous consent, your request to spread upon the Senate Journal the following Statement of Legislative Intent for H 331:

> The current physician's reimbursement system employed by the Industrial Commission is seriously flawed. The Advisory Committee to the Industrial Commission has struggled unsuccessfully to correct the problem for over two years. **H 331** adopts a fee schedule and affords the Industrial Commission the authority to set conversion factors. It is understood that overall physician

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> reimbursement may decrease by 10% by taking into consideration current billings for services outside the norm. The industrial Commission shall consider conversion factors employed by health insurers in Idaho as well as conversion factors employed by other states in our region when establishing the original conversion factors.
>
> Additionally, when setting conversion factors, the Commission must be conscious of the need for access to services for injured workers. Should the legislature find that the Commission has not exercised diligence and restraint, it is acknowledged that future legislatures may opt to establish said factors in statute.

This Statement of Legislative Intent does not have the force and effect of law. Nonetheless, it is an important tool in interpreting the Senate's intent in its passage of H 331. Furthermore, as is discussed more fully below, a reviewing court may not even consider legislative intent or legislative history unless the language of the statute is found to be ambiguous.

It is important to note that the Statement of Legislative Intent is found in the pages of the Senate Journal. In addition, the Senate took up consideration of this bill only after the House had passed it. While the Statement of Purpose found in the Senate Journal is similar to statements made by you when the bill was presented to the House Commerce and Human Resources Committee, the entry in the journal is only evidence of the Senate's intent. It cannot be used in discerning the intent of the House.

My November 2, 2005, letter to Idaho Industrial Commission ("Commission") Chairman Limbaugh notes the statement contained in the bill's Statement of Purpose and also the conflicting testimony to the House committee. However, it failed to discuss the intent language in the Senate Journal. (A copy of my November 2nd letter is enclosed.) If a court were to review this and arrive at the question of legislative intent, it would look to the Statement of Purpose in addition to the testimony before the House committee in attempting to discern legislative intent. The court would also note the Senate language. The fact that the journal entry was made contemporaneously with the passage of H 331 by the Senate is strong evidence of legislative intent with respect to Senate passage of the bill, but it does not help in determining the intent of the House. In this regard, it should be noted that the rule in Idaho for journal entries differs from the general rule concerning what properly goes into a journal entry. *See, e.g., Statutes and Statutory Construction,* J.B. Sutherland (updated by Norman J. Singer), §§ 8:1-8:2, p. 37, West Publishing Co. (2000).

Should it become necessary for a court to interpret H 331, the goal of the court will be to determine the meaning of the statute. In so doing, the court will rely upon the language of the statute and will probably not even look at extraneous items, such as journal entries, unless it finds some ambiguity in the language of the statute itself. As noted in my November 2nd letter, statutory interpretation begins with the words of the statute, and a court, in interpreting a statute, is to give the language of the statute its plain, obvious, and

rational meaning. *See* Huyett v. Idaho State University, 140 Idaho 904, 104 P.3d 946 (2004). Similarly, if a statute is not ambiguous, a court does not construe it but simply follows the law as written. Huyett v. Idaho State University, *supra*. If the statutory language is unambiguous, the court merely applies the statute as written; if it is ambiguous, the court attempts to ascertain legislative intent. Sumpter v. Holland Realty, Inc., 140 Idaho 349, 93 P.3d 680 (2004). In other words, if statutory language is not ambiguous, it is the duty of the court to follow the law as written, and if it is socially or otherwise unsound, the power to correct is legislative, not judicial. Anstein v. Hawkins, 92 Idaho 561, 477 P.2d 677 (1968).

The language of Idaho Code § 72-803, as amended by H 331, is not ambiguous. The language in question directs the Commission to adopt a fee schedule for reimbursement, and this the Commission has done. The Statement of Legislative Intent read into the Senate Journal states that there is an understanding that physician reimbursement may decrease by 10% by passage of the bill. This is a goal of the legislation, not a directive to the Commission. The directive to the Commission found in the legislative intent states:

> The Industrial Commission shall consider conversion factors employed by health insurers in Idaho as well as conversion factors employed by other states in our region when establishing the original conversion factors.
>
> Additionally, when setting conversion factors, the Commission must be conscious of the need for access to services for injured workers . . . .

2005 Idaho Senate Journal, p. 330.

In writing this opinion, I am assuming that the Commission did consider conversion factors employed by health insurers, as well as conversion factors employed by other states. If the Commission met this directive, then it may even be that the Statement of Legislative Intent was complied with. This question may ultimately have to be answered by a court.

The court that is applying the provisions of Idaho Code § 72-803, as modified by H 331, will have, as its goal, determining the meaning of the statute. In other words, a court's purpose is not to determine legislative intent but to determine the meaning of the statute. Legislative intent is a tool, albeit a tool of paramount importance, in determining the meaning of the statute. However, as noted above, if the meaning of the statute is clear from the language of the statute, the court will venture no further in trying to determine what the legislature means.

Regarding the role of legislative intent, it has been stated:

> Such a large number of judicial opinions in cases involving issues of statutory interpretation are written in the context of "legislative intent" that it is not unfair to suggest that many judges may be unaware of the existence of other relevant alternatives for decision-making. That there is, indeed, an alternative, as stated by Justice Holmes in his remark that, "We do not inquire

> what the legislature meant; we ask only what the statute means." His preference for the meaning of the statute over legislative intent as a criterion of interpretation has been expressly endorsed by Justices Jackson and Frankfurter, the latter of whom said that he even tried to avoid using the term "legislative intent." Courts have also supported the Holmes view. They have said inquiry begins not with conjecture about what Congress would have liked to have said when it wrote the statue or with what Congress would say today given the chance, but rather what Congress indeed expressed in the statutory text.

Statutes and Statutory Construction, J.B. Sutherland (updated by Norman J. Singer), § 45:07, p. 37, West Publishing Co. (2000)

CONCLUSION

Legislative intent, even if it is in the form of a journal entry, does not have the force and effect of law. This follows not only from the authority cited above but also from the Idaho Constitution, which requires that all amendments to the Idaho Code be set forth and published at length. Idaho Constitution Article III, § 18 provides:

> No act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length.

Although this section of the Constitution does not appear to be aimed at statements of intent, it would probably cover such statements and require that if they are to be given the force and effect of law, they must be published at full length in the bill itself.

I hope this opinion will be of some assistance to you. For your information and reference, in addition to my November 2nd letter to the Industrial Commission, I have enclosed copies of some prior letters from our office addressing this subject. If you have any questions or would like to discuss this matter further, do not hesitate to call upon me.

Very truly yours,

WILLIAM A. von TAGEN
Deputy Attorney General
Chief, Intergovernmental and Fiscal Law Division

WAT/mdw

Enclosures

c: Carl Bianchi, Director of Legislative Services

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

COPY

November 2, 2005

Thomas Limbaugh
Chairman
Idaho Industrial Commission
STATEHOUSE MAIL

RE: House Bill 331 – Industrial Commission Rule 31 Amendment

Dear Chairman Limbaugh:

Recently, Deputy Attorney General Blair Jaynes communicated your desire for an opinion from me concerning a rule that the Industrial Commission ("Commission") presently has under consideration for adoption. The proposed rule would amend the Commission's present Rule 31, dealing with acceptable charges for medical services under the Idaho Workers' Compensation Law. The amendment to Rule 31 is necessitated by the passage of House Bill 331 ("H331") by the 2005 Idaho Legislature ("Legislature"). H331 amends Idaho Code § 72-803 by mandating that fees for physicians' services shall be set using a fee schedule. The fee schedule to be used is the Resource Based Relative Value System ("RBRVS"), as that system may be modified from time to time. The RBRVS value for a given medical procedure set out in the fee schedule is then to be multiplied by conversion factors, which are to be determined by the Commission. The Commission has done this by rule, and the adoption of the fee schedule itself has not created any problem, but, apparently, the adoption of the conversion factors has created controversy and allegations that the Commission is not following the mandate of H331 or complying with the intent of the Legislature in passing H331.

The language that is the source of the controversy and that is found in H331 states, in relevant part:

> [P]rovided however, that fees for physician services shall be set using relative value units from the current year resource based relative value system (RBRVS) as it is modified from time to time, multiplied by conversion factors to be determined by the commission in rule.

The Commission's proposed rule carries out this mandate and does not appear to conflict in any way with the plain language of Idaho Code § 72-803, as modified by H331.

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As noted above, the controversy stems from allegations that the proposed rule is not in accordance with legislative intent. The Statement of Purpose for H331 does not shed light on the controversy. However, the Statement of Fiscal Impact states, in relevant part, that, "[i]n theory, workers' compensation rates could be reduced 2% by passage of this bill."

The bill's sponsor, Senator John Goedde, in testimony presented to the House Commerce and Human Resources Committee, suggested that passage of H331 and adoption of a corresponding rule might reduce payments to physicians by as much as ten percent (10%).

Ken McClure, a lobbyist for the Idaho Medical Association also spoke to the bill before the House Commerce and Human Resources Committee ("Committee"). According to Mr. McClure's testimony, as it is noted in the minutes of the Committee meeting, the intent language should reflect that there might be up to a 10% savings, but there is no data to show what the savings would actually be. Mr. McClure stated that the Commission's mandate should be to reduce the amounts being charged by certain physicians; not to reduce all physicians' fees by 10%. The testimony before the Committee was in conflict as to whether or not the legislation and rules adopted pursuant to the legislation would result in a 10% reduction in workers' compensation insurance premiums or in the amounts paid to doctors on workers' compensation cases. One legislator summarized the testimony as saying that, while insurance companies and employers seemed to be in favor of H331, the medical community was uncomfortable with the idea that physician reimbursement could be reduced 10% across the board.

The issue at hand is whether the proposed rule fails to comply with the statute, as amended by H331. It is my conclusion that the proposed rule does not violate the provisions of H331, and it is in accordance with the plain language of Idaho Code § 72-803.

Statutory interpretation begins with the words of a statute, and a court, in interpreting a statute, is to give the language of the statute its plain, obvious, and rational meanings. *See* Huyett v. Idaho State University, 140 Idaho 904, 104 P.3d 946 (2004). Similarly, if a statute is not ambiguous, a court does not construe it, but simply follows the law as written. Huyett v. Idaho State University, *supra*. If the statutory language is unambiguous, the court merely applies the statute as written; if it is ambiguous, the court attempts to ascertain legislative intent. Sumpter v. Holland Realty, Inc., 140 Idaho 349, 93 P.3d 680 (2004). In other words, if statutory language is not ambiguous, it is the duty of the court to follow the law as written, and it if it is socially or otherwise unsound, the power to correct is legislative, not judicial. Anstine v. Hawkins, 92 Idaho 561, 477 P.2d 677 (1968).

The language of Idaho Code § 72-803, as amended by H331, is not ambiguous. The language in question directs the Commission to adopt a fee schedule for reimbursement, and this the Commission has done. The legislation further directed the Commission to multiply the schedule to be adopted by a conversion factor to be determined by the Commission in rule. The proposed rule does this, as well. If the Legislature is dissatisfied with the Commission's proposed rule, it has the power to reject or modify the rule. Similarly, the Legislature could even amend Idaho Code § 72-803, if that is felt necessary.

Clearly, the sponsor of this legislation intended for the legislation to lower reimbursement rates to physicians, and that, in turn, would lower workers' compensation rates. The figure used by the sponsor was that the legislation would result in a 10% decrease in overall cost of physicians' services. It is unclear that the actual workers' compensation rates sought to be achieved by the decrease in the overall costs of physicians' services was hoped to range somewhere between a 2% and 10% reduction in workers' compensation premiums.

The testimony to the legislative committee and, in particular, the testimony before the House Commerce and Human Resources Committee, was split as to what might be expected from the passage of H331. Generally, the expectations from employers and insurance carriers was that adoption of a schedule of reimbursement would result in a reduction of premiums and a reduction in the amount of reimbursement paid to physicians. Union representatives and physicians acknowledged that, while there was some abuse on the part of some physicians seeking excessive reimbursement, not all physicians were abusing the system, and not all physicians should have their reimbursement reduced. It is hard to say which testimony swayed the Committee, and, thus, even if a court were to resort to legislative intent, it becomes difficult to determine just what the intent of the Legislature was. It appears that the Legislature was expecting some reduction in reimbursement and hoped that such reduction would result in a reduction in workers' compensation premiums.

In summary, I do not think the proposed rule is so out of line with the statute that a court would strike it down as an abuse of the Commission's discretion or that it would be struck down as contrary to the plain language of the statute. If it does not comport with the goals of the Legislature, then the Legislature certainly has within its province to reject or recommend amendments to the proposed rule or to amend the statute further.

I hope this letter will be of some assistance to you. If you have any questions or comments, please do not hesitate to call upon me.

Very truly yours,

WILLIAM A. von TAGEN
Deputy Attorney General
Chief, Intergovernmental and Fiscal Law Division

WAT/mdw

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

January 31, 2003

COPY

The Honorable William T. Sali
Idaho House of Representatives
State Capitol Building
STATEHOUSE MAIL

The Honorable Sharon Block
Idaho House of Representatives
State Capitol Building
STATEHOUSE MAIL

Re: Statement of Legislative Intent

Dear Representatives Sali and Block:

You ask how to resolve directions to an agency where statements of legislative intent in enacted appropriation bills contradict Idaho Code. Such intent statements are problematic, since Idaho's Constitution requires that amendments to the Code be set forth and published at length. Idaho Const. art. III, § 18. This is not done in statements of legislative intent.

The legislative intent statement in question may be in conflict with Idaho Code. Section 6 of SB 1490 from the 2002 legislative session states: "It is the intent of the Idaho Legislature that, notwithstanding Section 56-209d(4)(c), Idaho Code, adult dental services covered by the state's Title XIX Medicaid program shall be limited to emergency services only."

Section 56-209d, Idaho Code, refers to services to be provided in the medical assistance program, which is Medicaid. It states in pertinent part:

> Notwithstanding any other provision of this chapter, medical assistance shall increase:
>
> (4) Payment, as authorized by title XIX of the Social Security Act, as amended, and as determined under rules established by the director for

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(c) Adult dental services.

Emphasis added.

Were it not for the highlighted introductory language in this section, there would be no conflict between legislative intent and the Code. By referring in Idaho Code § 56-209d to an increase in Medicaid payments, one could argue that the Legislature intended never to decrease the services covered. That would most likely be an incorrect reading of intent, since the Legislature was simply adding services to be covered by Medicaid, the amount of which is to be determined by rule of the Department of Health and Welfare. This is demonstrated by the title of the bill that established the original Idaho Code § 56-209d, which states that the purpose is "to expand medical assistance services to be provided." 1987 Idaho Session Laws Ch. 170, p. 334. Likewise, when subsection (4) was added, the title of the bill stated that the purpose was "to add a medically needy program to the State's medical assistance program." 1991 Idaho Session Laws Ch. 233, p. 553. However, it is possible that a court would read the language referring to increasing payment literally and find there was a conflict created by the legislative intent.

The solution to this problem would be to amend Idaho Code § 56-209d to list the services that are covered by Medicaid, and delete the "medical assistance shall increase" language.

This letter is provided to assist you. The response is an informal and unofficial expression of the views of this Office based upon the research of the author.

Very truly yours,

William A. von Tagen
Division Chief
Intergovernmental & Fiscal Law

WAT/jg/ss

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

COPY

February 27, 2001

The Honorable Bruce Newcomb
Speaker
Idaho House of Representatives
HAND DELIVERY

Re: Appropriation Bill for Community College Districts

Dear Mr. Speaker:

You have forwarded to me a bill relating to money to be appropriated to the State Board of Education for community college support for fiscal year 2002. The bill would appropriate $20,581,400 for community college support. Section 2 of this bill contains a statement of legislative intent which reads:

> It is legislative intent that $3,200,000 of the amount appropriated in Section 1 of this act be applied directly to dollar-for-dollar property tax relief through a corresponding reduction of the FY2002 property tax levies in Kootenai County for the North Idaho College Community College District, and in Twin Falls and Jerome Counties for the College of Southern Idaho Community College District.

With respect to this language, you ask whether a bill cutting property taxes is a revenue raising measure which must be initiated in the House.

The answer to your question, particularly in the context of this bill is both complex and uncertain. At the outset it does not appear that this bill legally obligates anyone to provide property tax relief to the patrons of a community college district. There is a statement of intent and there certainly may be political ramifications for the Board of Education or for a community college district if such property tax relief is not provided. I believe, however, that the district trustees could choose to ignore this language of intent without causing any legal ramifications. The two community college districts could, in effect, take the money and run. The only sanction that could be imposed is a political one which could arise when the Joint Finance and Appropriations Committee once again considers the budget for community college support in the 2002 legislative session.

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If the legislative intent language found in section 2 of the bill has any binding legal effect it is unclear whether such a bill must originate in the House. Where revenue bills must originate and whether a bill which lowers a tax rate is to be considered a revenue raising bill was discussed at length in Attorney General's Opinion 99-2. As that opinion indicated, the case law in this area is unclear. I have enclosed a copy of Opinion 99-2 for your review.

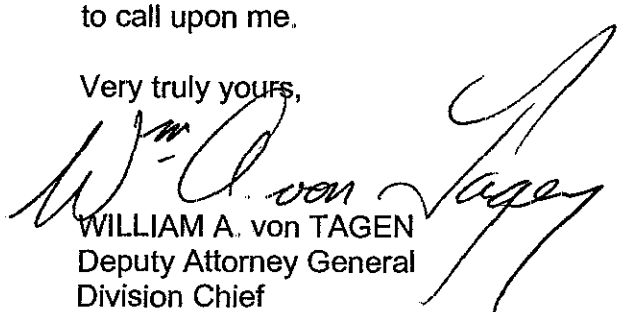
Similarly, complex legal issues arise when general fund revenue is directed to local units of government with the directive that it be used for property tax relief. One school of thought holds that the legislature empowers local units of government to levy taxes and collect and spend revenue. Under this school of thought, it would not matter whether a bill providing local property tax relief originated in the House or Senate. Another view is that even bills regarding tax cuts (and local tax cuts) are bills which relate to the raising of revenue. In other words, revenue is still raised, just in a slightly lesser amount. If a court were to follow this second line of reasoning then a directive that money be used for local property tax relief would have to originate in the House of Representatives and not in the Senate or in a joint committee.

I do not believe that these more complex legal issues can be answered or need be answered at this juncture. Since the statement of intent found in Section 2 of the bill is simply an expression of the will of the legislature. This expression of intent could not serve as the basis of a mandamus or other legal action against a community college district which ignored the intent and continued to tax at its present level. Simply stated, the sanction for violating the statement of intent is political, not legal.

Of course, the entire issue can be avoided by simply making the legislation a house bill by the appropriations committee. Such course is probably not necessary, but advisable as conservative and most likely to avoid any legal uncertainties.

If you have any questions, or would like to discuss this matter further, do not hesitate to call upon me.

Very truly yours,



WILLIAM A. von TAGEN
Deputy Attorney General
Division Chief
Intergovernmental & Fiscal Law Division

WAT:re

Enclosure

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

February 15, 2000

COPY

The Honorable Hal Bunderson
Idaho State Senate
STATEHOUSE MAIL

Dear Senator Bunderson:

You have ask me to review a draft of some legislative intent language which is being proposed to be made part of the public television fiscal year 2001 appropriation. I have reviewed this language and I find that there are no constitutional impediments to the legislator including this language on legislative intent. I have modified your proposed language. The proposed modifications to your language are found within the first subsection. Rather than the language as written, I would propose the following:

> No program shall be broadcast which promotes, supports or encourages behavior which violates Idaho criminal statutes.

Although the inclusion of the language you are proposing is not unconstitutional, it is doubtful that this language could serve as a basis to prohibit Idaho Public Television from showing a program which the legislature finds objectionable or which it believes violates the above statement of legislative intent.

This opinion letter is not an endorsement by the Office of Attorney General of the statement of intent that is being proposed. I have not had the opportunity to discuss this matter with Attorney General Lance. This letter is simply intended to provide you with some legal assistance with respect to the language being proposed.

If you would like to discuss this matter further, do not hesitate to call upon me.

Very truly yours,

WILLIAM A. von TAGEN
Deputy Attorney General
Division Chief
Intergovernmental and Fiscal Law Division

WAT:dw

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