



**STATE OF IDAHO**  
OFFICE OF THE ATTORNEY GENERAL  
**RAÚL R. LABRADOR**

**ATTORNEY GENERAL OPINION NO. 23-2**

TO: The Honorable Mike Moyle  
Idaho House of Representatives  
P.O. Box 83720  
Boise, Idaho 83720-0038

The Honorable Jason Monks  
Idaho House of Representatives  
P.O. Box 83720  
Boise, Idaho 83720-0038

This Formal Opinion addresses the effects of Idaho Code § 33-804, Idaho Code § 63-809, and Property Tax Administrative Rule 801.

**I. QUESTIONS PRESENTED**

A. Does Idaho law allow a school district to seek voter approval of an additional plant facilities levy before the expiration of an existing ten-year plant facilities levy pursuant to Idaho Code § 33-804 and Property Tax Administrative Rule 801?

**Short Answer:** Neither statute nor rule permits school districts to seek voter approval of an additional plant facilities levy before the expiration of an existing plant facilities levy.

B. Would an additional plant facilities levy be considered a levy that is “not authorized by law” pursuant to Idaho Code § 63-809(2)?

**Short Answer:** Because a concurrent plant facilities levy transgresses an explicit statutory provision, that concurrent levy should be set aside as illegal since it attempts to fix a levy not authorized by law.

## II. TENETS OF STATUTORY CONSTRUCTION

In matters of statutory interpretation, the Idaho Supreme Court has long held that while “[s]tatutory interpretation begins with the literal language of the statute[,] [p]rovisions should not be read in isolation, but must be interpreted in the context of the entire document.” *Estate of Stahl v. Idaho State Tax Comm’n*, 162 Idaho 558, 562, 401 P.3d 136, 140 (2017) (quoting *State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011)); see also Idaho Code § 73-113. When construing a statute, it must be given “an interpretation that will not render it a nullity, and effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.” *Bonner County v. Cunningham*, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014) (quoting *State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006)). Where ambiguity exists in a statute or a conflict exists between provisions of law, statutory interpretation is necessary. “The object of statutory interpretation is to give effect to legislative intent.” *State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009) (citation omitted). When interpreting statutes, “[c]onstrutions that would lead to absurd or unreasonably harsh results are disfavored.” *Saint Alphonsus Reg’l Med. Ctr. v. Gooding County*, 159 Idaho 84, 89, 356 P.3d 377, 382 (2015) (quoting *Spencer v. Kootenai County*, 145 Idaho 448, 455, 180 P.3d 487, 494 (2008)). These same tenets of statutory construction apply when interpreting administrative rules. *Grace at Twin Falls, LLC v. Jeppesen*, 171 Idaho 287, 519 P.3d 1227, 1232 (2022). This Office employed these tenets of statutory construction in reviewing Idaho Code § 33-804, Idaho Code § 63-809, and Property Tax Administrative Rule 801.

## III. ANALYSIS

### **A. Idaho law does not permit school districts to seek voter approval of an additional plant facilities levy before the expiration of an existing plant facilities levy.**

Generally speaking, Idaho Code § 33-804 permits school districts, with voter approval, to collect revenue through a plant facilities levy. The plain language of the statute indicates that a school district may not propose a new plant facilities levy before the expiration of an already existing levy of the same kind. Idaho Code § 33-804 states in relevant part:

33-804. SCHOOL PLANT FACILITIES RESERVE FUND LEVY. In any school district in which a school plant facilities reserve fund has been created . . . to provide funds therefor the board of trustees shall submit to the qualified school electors of the district the question of a levy not to exceed four-tenths of one percent (.4%) of market value for assessment purposes in each year, as such valuation

existed on December 31 of the previous year, for a period not to exceed ten (10) years.

The question of a levy to be submitted to the electors of the district and the notice of such election shall state the dollar amount proposed to be collected each year during the period of years in each of which the collection is proposed to be made, the percentage of votes in favor of the proposal which are needed to approve the proposed dollar amount to be collected, and the purposes for which such funds shall be used. Said notice shall be given, the election shall be held subject to the provisions of section 34-106, Idaho Code, and conducted and the returns canvassed as provided in title 34, Idaho Code; . . . .

...

If the question be approved, the board of trustees may make a levy, not to exceed four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, in each year for which the collection was approved, sufficient to collect the dollar amount approved and **may again submit the question at the expiration of the period of such levy**, for the dollar amount to be collected during each year, and the number of years which the board may at that time determine. Or, during the period approved at any such election, if such period be less than ten (10) years or the levy be less than four-tenths of one percent (.4%) of market value for assessment purposes as such valuation existed on December 31 of the previous year, the board of trustees may submit to the qualified school electors in the same manner as before, the question whether the number of years, or the levy, or both, be increased, but not to exceed the maximum herein authorized. If such increase or increases be approved by the electors, the terms of such levy shall be in lieu of those approved in the first instance, but disapproval shall not affect any terms theretofore in effect.

....

Idaho Code § 33-804 (emphasis added). To summarize, this statute authorizes school districts which have a plant facilities reserve fund to levy a tax and collect revenue for this fund. The statute specifies two conditions: (1) a plant facilities levy may not

exceed 10 years; and, (2) it may not exceed “four-tenths of one percent (.4%) of market value for assessment purposes.” *Id.* The statute also specifies requirements for what must be disclosed by a school district when submitting “[t]he question of a levy . . . to the electors of the district.” *Id.* Additionally, the statute specifies a process for “again submit[ting]” the question of a levy to voters and for amending an existing plant facilities levy. *Id.*

The language of Idaho Code § 33-804 proscribes a school district from presenting to voters an additional plant facilities levy prior to the expiration of an already existing levy. The plain language of this statute specifically addresses when a school district may “again submit the question” of a plant facilities levy to voters. *Id.* The statute permits the question to be submitted to voters “at the expiration of the period of such levy,” referring to the already existing plant facilities levy. *Id.* There is no provision in the statute that authorizes school districts to submit the question of a new levy before the expiration of this period.

The statute does provide one alternative: an existing plant facilities levy whose term is less than the maximum limit (ten years) or the levy limit (four-tenths of one percent of market value) may be amended to increase either limit, but “not to exceed the maximum” authorized in the statute. *Id.* If a plant facilities levy is amended, “the terms of such [amended] levy shall be in lieu of those approved in the first instance.” *Id.* In short, while the statute does allow for an existing plant facilities levy to be amended under certain limited conditions, it contains no language permitting a school district to submit the question of a new plant facilities levy to voters before the “expiration of the period” of an existing levy. *Id.*

Aspects of the statute would be nullified if school districts could levy concurrent plant facilities levies. Most immediately, multiple levies could render the time limit and levy limit in the statute effectively meaningless. Moreover, even if an additional plant facilities levy did not violate the time or levy rate limits, presenting a question of a new levy to voters without following the amendment procedure in the statute would nullify those provisions of the statute. It is inconsistent with the statute to read it as permitting concurrent plant facilities levies.

In interpreting this statute, the Commission appears to have reached this same conclusion about Idaho Code § 33-804. Property Tax Administrative Rule 801 states:

Any school or library district with an existing plant facilities fund is not allowed to levy for an additional plant facilities fund in any tax year until the period of the existing plant facilities fund has expired. This limitation will not apply to any state-authorized plant facilities levy,

established under Section 33-909, Idaho Code or the cooperative service agency school plant facilities levy established under Section 33-317A, Idaho Code.<sup>1</sup>

IDAPA 35.01.03.801(02). In this rule, the Commission appears to have interpreted Idaho Code § 33-804 as prohibiting school districts from having concurrent plant facilities levies. However, the Commission's intent is not fully clear as the rule uses the word "fund" throughout. The use of the word "fund" introduces possible ambiguity to the rule which makes it possible to read the Commission's rule in two ways. First, that the rule interprets Idaho Code § 63-804 as prohibiting a school district from having multiple plant facilities levies. Second, that the rule interprets the statute as prohibiting a school district from having multiple plant facilities funds. Neither of these readings is inconsistent or contradictory of Idaho Code § 33-804 and neither reading implies that a school district may have concurrent plant facilities levies. As the language in Idaho Code § 33-804 is sufficiently clear, the possible ambiguity in this rule is immaterial to interpreting the statute.

Finally, interpreting Idaho Code § 33-804 as not permitting school districts to ask voters for concurrent plant facilities levies is consistent with general principles of municipal law.

[M]unicipalities do not enjoy unfettered power to act in the absence of an express statutory limitation. Instead, "[m]unicipal corporations in Idaho may exercise *only* those powers granted to them by the state Constitution or the legislature." *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298, 304 (Idaho 1990) (emphasis added) (citations omitted); *Alliance for Property Rights and Fiscal Responsibility v. City of Idaho Falls*, 742 F.3d 1100, 1102 (9th Cir.2013) ("Idaho has long recognized the proposition that a municipal corporation, as a creature of the state, possesses and exercises only those powers either expressly or impliedly granted to it.") (quoting *Caesar v. State*, 101 Idaho 158, 610 P.2d 517, 519 (Idaho 1980)).

*In re Old Cutters, Inc.*, No. 1:13-CV-00057-EJL, 2014 WL 1319854, at \*10 (D. Idaho Mar. 31, 2014), dismissed (Nov. 26, 2014).

This position, also known as "Dillon's Rule," has been generally recognized as the prevailing view in Idaho.

---

<sup>1</sup> While similarly named, these levies are separate levies that are not related to the procedure set forth in Idaho Code § 33-804.

Moore, "Powers and Authorities of Idaho Cities: Home Rule or Legislative Control?", 14 Idaho L.Rev. 143, 147, n. 18 (1977) (for cases supporting this view). Thus, under Dillon's Rule, a municipal corporation may exercise only those powers granted to it by either the state constitution or the legislature and the legislature has absolute power to change, modify or destroy those powers at its discretion. *State v. Steunenberg*, 5 Idaho 1, 4, 45 P. 462, 463 (1896).

*Caesar v. State*, 101 Idaho 158, 160, 610 P.2d 517, 519 (1980). Municipalities are not presumed to have any inherent power. They may only exercise such power as has been expressly granted to them by either the Constitution or by statute.

Neither the Constitution nor any statute grants school districts the authority to ask voters to approve concurrent plant facilities levies. Idaho's Constitution generally permits the Legislature to provide a system of revenue for counties and municipalities. See Idaho Const. art. VII, § 6.; art. VII, § 15; art. VIII, § 3; and art. XVIII, § 5. None of the constitutional provisions describing municipal finance grant any specific right to school districts related to plant facilities levies.

Additionally, no specific statutory authority warrants school districts to ask voters for what would be a concurrent plant facilities levy. After voters in a school district have approved a plant facilities levy, the statute presents two paths forward for a school district. It may either wait until the expiration of the existing levy to again present the question of a levy to taxpayers "[o]r" they may propose an amendment to the existing plant facilities levy. Idaho Code § 33-804. There is no third option. The statute does not authorize a school district to request a second levy prior to the expiration of a current plant facilities levy. Consistent with Dillon's Rule, the school district may only exercise such power as has been expressly granted to it. As that statute does not grant school districts the power to request a second levy during the term of an existing levy, such authority should not be inferred.

Taken altogether, the plain language of the statute does not permit a school district to propose a new plant facilities levy until an already existing levy of the same kind expires.

**B. A Concurrent plant facilities levy, by failing to comply with Idaho Code § 63-809(2), should be considered "not authorized by law"**

Idaho Code § 63-809 requires that the Idaho State Tax Commission ("Commission") report unauthorized and excess levies to either the Office of Attorney General or to specific county officials. The code section states that the Commission "shall carefully examine the statements furnished to it" by the counties related to

their levy of property taxes. Idaho Code § 63-809; *see also* Idaho Code § 63-808. Under subsection (2) of this statute, if the Commission discovers

that the governing authorities of any . . . school district . . . have fixed a levy for any purpose or purposes not authorized by law or in excess of the maximum provided by law for any purpose or purposes, [then] the commission shall thereupon notify the attorney general . . . [and] notify the board of county commissioners, county treasurer and county attorney of the county in which it appears that such unauthorized or excess levy has or levies have been fixed.

Idaho Code § 63-809(2). Upon notification from the Commission, the attorney general or the county attorney “shall immediately bring suit in a court of proper jurisdiction against the . . . governing authorities of any . . . school district . . . levying such unauthorized or excess levy to set aside such levy as being illegal.” Idaho Code § 63-809(3).<sup>2</sup>

In fulfilling its duty, the Commission reviews all property tax levies claimed by counties and municipalities. Idaho Code § 63-809(1). By rule, the Commission presumes that the reports made to it by the counties and municipalities are consistent with “pertinent statutory provisions.” IDAPA 35.01.03.803(01)(a). If the Commission receives a complaint about a levy, the Commission will determine whether the levy is appropriate. IDAPA 35.01.03.120(05). “The Tax Commission’s investigatory authority is limited to determining whether a levy rate or property tax budget increase exceeds any statutory maximum, or whether a levy is unauthorized.” *Id.* The Commission will report a levy as being unauthorized or excessive if there is “clear and convincing documentary evidence” to establish that it is “an unauthorized levy.” *Id.* Whether the Commission will determine any specific levy to be unauthorized depends upon its review of specific facts on a case-by-case basis. This Office does not have authority to direct the Commission’s administrative decision-making process or its interpretation of law related to any particular case.

The language of Idaho Code § 63-809 is broad, categorical, and capacious, targeting actions which have “fixed a levy for any purpose or purposes *not authorized by law . . .*” (italics added). This phrase has never been interpreted by a court and the Commission has not issued any substantive rules, decisions, or guidance interpreting this phrase. Nevertheless, the operative broad statutory language is sufficient to address this scenario.

---

<sup>2</sup> This summary of this provision is consistent with this Office’s previous statements about this provision from Opinion No. 91-9 issued in 1991 and Opinion No. 95-3 issued in 1995. 1991 Idaho Att’y Gen. Ann. Rpt. 98 and 1995 Idaho Att’y Gen. Ann. Rpt. 16.

In the scenario analyzed here, that is, where a school district asks its voters for a concurrent plant facilities levy, that is, one lacking statutory warrant, and which transgresses the explicit terms of Idaho Code § 33-804, it is reasonable to expect that a court would set aside a concurrent plant facilities levy as illegal since it lacks explicit statutory warrant.<sup>3</sup>

#### **IV. CONCLUSION**

Idaho Code § 33-804 does not authorize school districts to levy concurrent plant facilities levies. The statute only permits a school district to amend its current plant facilities levy or wait to seek voter approval for a new plant facilities levy following the expiration of its current levy. If a school district does fix a concurrent plant facilities levy, the additional plant facilities levy should be considered a levy that is “not authorized by law” pursuant to Idaho Code § 63-809(2).

#### **V. AUTHORITIES CONSIDERED**

##### **1. Idaho Constitution**

Article VII, § 6.  
Article VII, § 15.  
Article VIII, § 3.  
Article XVIII, § 5.

##### **2. Idaho Code**

§ 33-804.  
§ 63-808.  
§ 63-809.  
§ 63-810.  
§ 73-113.

##### **3. Idaho Administrative Rules**

Property Tax Administrative Rule 120; IDAPA 35.01.03.120.  
Property Tax Administrative Rule 801; IDAPA 35.01.03.801.  
Property Tax Administrative Rule 803; IDAPA 35.01.03.803.

---

<sup>3</sup> If an otherwise approved levy for an authorized purpose contains mathematical or clerical errors, the legislature permits those errors to be corrected under Idaho Code § 63-810 without voiding the levy.

#### 4. Idaho Cases

*Bonner County v. Cunningham*, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014).

*Caesar v. State*, 101 Idaho 158, 160, 610 P.2d 517, 519 (1980).

*Estate of Stahl v. Idaho State Tax Commission*, 162 Idaho 558, 562, 401 P.3d 136, 140 (2017).

*Grace at Twin Falls, LLC v. Jeppesen*, 171 Idaho 287, 519 P.3d 1227, 1232 (2022).

*Saint Alphonsus Regional Medical Center v. Gooding County*, 159 Idaho 84, 89, 356 P.3d 377, 382 (2015).

*Spencer v. Kootenai County*, 145 Idaho 448, 455, 180 P.3d 487, 494 (2008).

*State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009).

*State v. Mercer*, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006).

*State v. Schulz*, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011).

#### 5. Federal Cases

*In re Old Cutters, Inc.*, No. 1:13-CV-00057-EJL, 2014 WL 1319854, at \*10 (D. Idaho Mar. 31, 2014), dismissed (Nov. 26, 2014).

#### 6. Attorney General Opinions

1991 Idaho Att'y Gen. Ann. Rpt. 98.

1995 Idaho Att'y Gen. Ann. Rpt. 16.

Dated this 2<sup>nd</sup> day of August, 2023.



RAÚL R. LABRADOR  
Attorney General

#### Analysis by:

JEFFERY J. VENTRELLA  
Associate Attorney General