ATTORNEY GENERAL OPINION NO. 94-4

TO: Honorable Jerry L. Evans
State Superintendent of Public Instruction
STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED

1. Do fees charged to students attending public schools fall within the meaning of "fees" set forth in Senate Bill No. 1490?

2. If so, how must a school district comply with the advertising requirement set forth in Idaho Code § 63-2225, since such fees are not assessed against property?

CONCLUSION

1. Yes. All fees charged by school districts fall within the definition of "fees" set forth in Senate Bill (S.B.) No. 1490.

2. While it may not be possible to follow exactly the form of advertising set forth in Idaho Code § 63-2225, each school district must give public notice and hold a public hearing for any fee increase that exceeds 105%.

ANALYSIS

1. School District Fees Fall Within the Mandate of S.B. No. 1490 and Must be Advertised

S.B. No. 1490, codified as Idaho Code § 63-2224A, provides:

> No taxing district may request a fee increase that exceeds one hundred five percent (105%) of the amount of the fee collected in the previous year, unless it advertises its intent to do so in a similar manner to that contained in section 63-2225, Idaho Code. Any taxing district that is required to advertise as provided in this section and which fails to do so shall have the validity of all or a portion of the fees it collects be voidable. A taxing district shall at a minimum, in the advertisement, list the amount of the fees to be collected, the source of the fees, the percentage increase, any exemptions to the fees, an average cost of the fees per person, and any appeal procedures available to the imposition of the fees.

Your letter recognized that the Idaho Constitution prohibits school districts from charging fees or costs for courses in which credit is given. Paulson v. Minidoka Cnty. Sch. Dist. No. 331, 93 Idaho 469, 463 P.2d 935 (1970). However, school districts may charge fees for voluntary activities and extra costs such as extracurricular activities, driver's education, towel or locker use, adult education courses, breakfasts and lunches, parking and similar services or activities.

The Idaho Legislature did not define "fee" in S.B. No. 1490. Thus, we must look for guidance to relevant definitions of "fee" and the rules of statutory construction to see how those definitions might be applied in this instance.

Black's Law Dictionary (5th ed. 1979) provides the following definition of a fee:

> A charge fixed by law for services of public officers or for use of a privilege under control of government. A recompense for an official or professional service or a charge or emolument or compensation for a particular act or service. A fixed charge or perquisite charged as recompense for labor; reward, compensation, or wage given to a person for performance of services or something done or to be done.

(Citation omitted.)

In Brewster v. City of Pocatello, 115 Idaho 502, 768 P.2d 765 (1988), the Idaho Supreme Court distinguished between a "fee" and a "tax" by stating "a fee is a charge for a direct public service rendered to the particular consumer while a tax is a forced contribution by the public at large to meet public needs." *Id.* at 505, 768 P.2d at 768.

The rules of statutory construction must also be applied. In Sherwood v. Carter, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991), the Idaho Supreme Court stated:

> It is a basic rule of statutory construction that, unless the result is palpably absurd, we must assume that the legislature means what is clearly stated in the statute. Statutes must be interpreted to mean what the legislature intended for the statute to mean, and the statute must be construed as a whole. The clearly expressed intent of our legislature must be given effect and there is no occasion for construction where language of the statute is unambiguous. In construing a statute, the words of the statute must be given their plain, usual and ordinary meaning.

(Citations omitted.)

In this instance, what is "clearly stated" is that a fee increase of more than 105% of the previous year's fee amount cannot be imposed by a taxing district unless it advertises its intent to do so. If we apply the "plain, usual and ordinary meaning" to the words here, a "fee" is a charge for a particular act or service (Black's 1979) "or a charge for a direct public service rendered to the particular consumer" (Brewster, 115 Idaho at 502, 768 P.2d at 765). Thus, it is apparent that a "fee" charged by a school district for voluntary or extracurricular activities or services falls within the legal definition of "fee" set forth in S.B. No. 1490 and that any increase over the fees of the previous year of 5% or more must be advertised.

2. A School District Must Give Notice and Hold a Public Hearing for a Fee Increase in Excess of Five Percent

Idaho Code § 63-2225 sets forth the form and content of notice of a proposed increase in taxes. The notice must include an estimated schedule of increase for a typical home of $50,000, a typical farm of $100,000, and a typical business of $200,000 taxable value. The purpose of the notice is to inform taxpayers of the proposed increase by the taxing district and to put the proposal into some kind of financial perspective by allowing taxpayers to see what the tax effect might be on certain types of property.

A published notice of proposed fee increases should have the same effect--namely, to notify the readers of the proposed fee increase and of the ramifications of the fee increase. S.B. No. 1490 requires that the advertisement be in a "similar manner to that contained in § 63-2225, Idaho code." Thus, the public notice must include the "amount of the fees to be collected, the source of the fees, the percentage increase, any exemptions to the fees, an average cost of the fees per person, and any appeal procedures available to the imposition of the fees."

For property taxpayers, the notice required by Idaho Code § 63-2225 is primarily informational. The taxpayer does not have a choice to pay or not to pay. Applied to school district fee structures, however, the notice requirement gives the prospective payer--the student--a chance to decide whether he or she wishes to pay for the service or activity. Since Paulson prohibits school districts from charging students for courses in which credit is given, the "fee" notice will apply to areas over which the student has some discretion. And, should the student wish to argue that the proposed fee increase does, in fact, apply to an area covered by Paulson, the notice will also include information about how that student might appeal. Such an appeal would be to an Idaho district court.

While S.B. No. 1490 does not address the issue of a public hearing, it does provide that the notice requirement must be handled in a "similar manner" as the notice requirement of Idaho Code § 63-2225. That notice must invite citizens to a public

hearing on the matter. Thus, it can only be concluded that the legislature intended for a public hearing to be held on the issue of fee increases. School districts can hold such public hearings at regular or special school board meetings, thus eliminating the need for special meetings solely for the purpose of reviewing the proposed fee increases.

AUTHORITIES CONSIDERED

1. Idaho Code:

§ 63-2224A.
§ 63-2225.

2. Idaho Cases:

Brewster v. City of Pocatello, 115 Idaho 502, 768 P.2d 765 (1988).

Paulson v. Minidoka Cnty. Sch. Dist. No. 331, 93 Idaho 469, 463 P.2d 935 (1970).

Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 (1991).

3. Other Authorities:

Black's Law Dictionary (5th ed. 1979).

DATED this 19th day of July, 1994.

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Analysis by:

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