ATTORNEY GENERAL OPINION NO. 96-3

To: Honorable Hal Bunderson
Idaho State Senate
P.O. Box 52
Meridian, ID 83680

Per request for Attorney General's Opinion

BACKGROUND

In November 1996 the voters will have the opportunity to vote on the proposed One Percent Initiative ("Initiative"), which would limit property taxes. Recently, you asked seven questions of the Attorney General's Office concerning the meaning of some of the terms in the Initiative and what effect the Initiative might have upon the Idaho property tax structure.

This is not the first time that such an initiative has been before Idaho voters. Idaho passed an earlier version of this Initiative in 1978. In addition, this is not the first time that the Attorney General's Office has been asked to give its opinion on a property tax initiative. This opinion refers to Attorney General Opinion 91-9, which reviewed an earlier version of this Initiative. A more complete understanding of this opinion might be gained from a reading of Attorney General Opinion 91-9.

QUESTIONS PRESENTED

You requested an Attorney General Opinion regarding the proposed One Percent Initiative. Specifically, you ask the following questions:

1. Section 5 of the Initiative emphasizes that "the legislature will fund *all* public education exclusively from the general fund and other state and federal revenue sources, by an amount necessary to replace *all* property tax revenue funding of *all* public education."

    a. Does the Initiative requirement that "the legislature will fund all public education" include funding for school plant facilities? Also, please provide your opinion about section 1.4 regarding the status of other (non-school) existing and new voter-approved issues, other than bonds.

    b. If the state issues bonds exclusively to finance public school plant facilities, does the substance of that action fall under the two-thirds majority vote requirement of art. 8, sec. 3 of the Idaho Constitution?

2. The "Petition Summary" states that the Initiative removes maintenance and operation funding of community colleges from property tax, yet does not use the term "community colleges" in the text. Are community colleges properly defined as public education?

3. Do the opinions and conclusions set forth in Attorney General Opinion 91-9 have applicability to this Initiative? Specifically, section 1.1 of the current Initiative states: "The one percent (1%) shall be collected by the counties and apportioned according to law to the taxing districts within the counties." The 1991 Attorney General Opinion concluded that the initiative failed to "provide any entity with authority to adjust tax levies" and that there was no "procedural mechanism" provided to carry out the requirement. Does the current Initiative suffer from the same defect?

4. Section 1.2 of the Initiative speaks to the "annual budget." Is the annual budget of cities, counties and taxing districts the entire budget regardless of source of funds?

5. Section 6 of the Initiative ostensibly repeals Idaho Code § 63-923 which provides and refers to Idaho Code § 63-2220A (the 1995 3% budget cap law of HB 156). Would Idaho Code § 63-2220A and its companion, Idaho Code § 63-2220B (new construction roll, HB 649 of 1996), both be repealed and replaced by the new Idaho Code § 63-923 found in the current Initiative?

6. How would judicial confirmation obligations for "ordinary and necessary" expenses or urban renewal bonds not requiring voter approval be affected by the Initiative?

7. Does the Initiative apply to charter school districts in the same fashion as other school districts?

CONCLUSIONS

1. Public education includes funding for school plant facilities. Although school districts might decide not to incur any future debt for school plant facilities, the Initiative may not prohibit school districts from incurring future debt. If the state should issue bonds to pay for school plant facilities, the state's bonded indebtedness would not be subject to art. 8, sec. 3, and its requirement for a two-thirds majority vote to approve such debt, but the state's indebtedness would be subject to art. 8, sec. 1, and its requirement for a majority vote for approval of state debt exceeding $2 million.

2. Community colleges are not included within the definition of public education.

3. The provisions of the 1996 version of the Initiative concerning the collection and apportionment of taxes do not meaningfully differ from the version previously addressed in Attorney General Opinion 91-9. Therefore, the conclusion reached in that opinion remains valid, to wit: "The requirement in section 1 of the One Percent Initiative that taxes 'shall be collected by the counties and apportioned according to law to the taxing districts within the counties' is inoperable because, under existing law, counties have no authority to adjust taxes imposed by taxing districts within their counties." 1991 Idaho Att'y Gen. Ann. Rpt. 98, 99.

4. When the Initiative refers to the "annual budget," it refers to the entire annual budget regardless of source of funding.

5. The Initiative is not in conflict with Idaho Code §§ 63-923, 63-2220A or 63-2220B. It is, however, in conflict with the property tax code taken as a body of law and may also be in conflict with other code provisions, for example, certain provisions of chapter 17, title 50, Idaho Code.

6. Ordinary and necessary expenses are not subject to voter approval requirements and are not covered by the Initiative's exception from the property tax limitations for existing or subsequent indebtedness. The Initiative may have a serious impact on the ability to repay urban renewal bonds issued prior to the effective date of the Initiative. With regards to future issuance of urban renewal bonds, the reduction in funds available to finance the issuance of the bonds will have the effect of reducing the number of bonds issued and, thus, the number of urban renewal projects.

7. The Initiative will apply to charter school districts the same as other school districts.

ANALYSIS

1. "Public Education" Includes Funding for School Plant Facilities

Part (a) of question 1 raises several issues. The first is whether the Initiative's requirement that "the legislature will fund all public education" includes funding for school plant facilities? It appears that it does.

The reference to "all public education" comes from subsection 1 of section 5 of the Initiative, which states:

> The Constitution of the State of Idaho provides, "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the Legislature of Idaho to establish and maintain a general uniform and thorough system of public, free common schools."
>
> To more fully comply with that constitutional mandate, the state legislature shall fund all public education exclusively from general fund and other state and federal revenue sources, by an amount necessary to replace all property tax revenue funding of all public education.[1]

Art. 9 is the public education article of the Idaho Constitution. It is written in general terms and does not explicitly refer to school facilities or school buildings. However, from a historical perspective, there is little basis to argue that the provision of school facilities is not part of the "system of public, free common schools." Quite the contrary, when the Idaho Supreme Court construed this constitutional provision in Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993) (ISEEO I), it held that the requirements of the chapter of the State Board of Education Rules and Regulations for Public Schools K-12 addressing school facilities was one of three chapters of the regulations that was consistent with the constitutional requirement of thoroughness. 123 Idaho at 583, 850 P.2d at 734.[2] Given this holding and the State Board of Education's historical role in prescribing standards for school plant facilities, it can be concluded that funding for "all public education" includes funding for school plant facilities.

Provisions of the Initiative exempt existing bonded indebtedness[3] and subsequent indebtedness[4] approved by a two-thirds majority vote, but it does not require school districts to finance their own facilities. Your letter observes: "Presumably under the 1% Initiative, school districts would have no further reason to issue any more debt,[5] that funding obligation having passed to the state under section 5."

You also raise questions regarding section 1.4 of the Initiative regarding the status of "other (non-school) existing and new voter approved issues other than bonds."

Section 1.4 of the Initiative, set forth in note 2, explicitly exempts "the interest and redemption charges on any indebtedness or school plant facilities levies approved by the voters prior to the time this section becomes effective." Section 3, set out in note 4, allows new taxes to be imposed by a two-thirds majority of those voting in an election called for that purpose.

It is a rule of statutory construction that courts "must construe statutory terms according to their plain, obvious, and rational meanings." Nelson by and Through

Nelson v. City of Rupert, — Idaho —, —, 911 P.2d 1111, 1113 (1996). The plain, obvious and rational meaning of section 1.4 of the Initiative is that its "property tax limitations . . . shall not apply . . . on any indebtedness . . . approved by the voters prior to the time this section becomes effective or any subsequent indebtedness approved pursuant to art. 8, sec. 3, of the Idaho Constitution relating to bonds." Section 1.4's disjunctive, *i.e.*, its exemption from the general 1% limitations for "any indebtedness or school plant facilities levies," means that any indebtedness approved by the voters before the section becomes effective is exempt from the 1% limitation. Likewise, under section 1.4, any future indebtedness unrelated to school plant facilities approved for bonds according to art. 8, sec. 3 of the Idaho Constitution will also be exempt.[6] And finally, under section 3 of the Initiative, a taxing district can continue to incur indebtedness or liability exceeding the income and revenue for one year upon approval by two-thirds of the qualified electors voting in an election for that purpose. Thus, this opinion concludes that the Initiative will not affect indebtedness paid from property taxes previously approved by the voters or future indebtedness or bonds approved according to art. 8, sec. 3.

Most likely Section 1.4 and Section 5 of this Initiative will be read to permit local school districts to incur bonded indebtedness to fund additional facilities not provided by the state. It is possible, however, that a court might reach a different interpretation. A court, for instance, might conclude that the Initiative does not permit a local school district to incur bonded indebtedness and to use bond proceeds to fund facilities not provided by the state. The mere possibility that a court might rule in this way may, as a practical matter, limit the ability to issue bonds. Investors may be unwilling to purchase bonds if bond counsel is unwilling to confirm the authority of districts to issue bonds. If the Initiative passes, the authority to issue bonds should be clarified.

In part (b) of question 1, you ask whether the state's power to issue bonds is affected by the two-thirds majority vote requirement of art. 8, sec. 3 of the Idaho Constitution. Alternatively, you ask whether a 50 percent majority is all that is required.

Art. 8, sec. 3, is nearly intractable. It consists of a catchline, a 123-word sentence and a 406-word sentence, the latter of which is partially reproduced in note 6. Fortunately, since your question focuses on the state's issuance of bonds and this section deals with county and municipal indebtedness, the section need not be reviewed at length. The section by its own term applies only to "county, city, board of education, or school district, or other subdivision of the state . . . indebtedness, or liability . . . exceeding in that year, the income and revenue provided for it for such year . . . ."

The Idaho Supreme Court held that this section does not apply to the state in the case of State *ex rel.* Miller v. State Board of Education, 56 Idaho 210, 52 P.2d 141 (1935). In that case, Attorney General Miller sought a declaratory judgment that the

regents of the University of Idaho were subject to the limitations of art. 8, sec. 3, when they proposed to issue 30-year bonds to pay for the construction of an infirmary at the University of Idaho. Among other things, the court said:

> Had it been intended by the framers of the Constitution to place the same limitations and restriction on "the Regents of the University of Idaho" as a corporation that were placed on counties, cities, towns and other municipal corporations by sec. 3, art. 8, they would have undoubtedly incorporated in this section (sec. 3, art. 8) the name of the Regents of the University, and placed the Board of Regents among the inhibited classes specified.

56 Idaho at 215. This analysis concludes that the state itself is not subject to the restrictions of art. 8, sec. 3.

That is not, however, the end of the analysis. Art. 8, sec. 1, addresses state indebtedness. It provides:

> **§ 1. Limitation on public indebtedness.—**The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate . . . exceed in the aggregate the sum of two million dollars ($2,000,000), except in case of war, to repel an invasion, or suppress an insurrection, unless the same shall be authorized by law, for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt or liability as it falls due, and also for the payment and discharge of the principal of such debt or liability within twenty (20) years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged. But no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for or against it at such election, and all moneys raised by the authority of such law shall be applied only to specified objects therein stated or to the payment of the debt thereby created . . . .

A simple majority may approve indebtedness under this section. Thus, if the state were to issue bonds to finance public school plant facilities, those bonds will be subject to this constitutional limitation, assuming that their aggregate obligation exceeded $2 million.

In addition, art. 8, sec. 2, provides:

> **§ 2. Loan of state's credit prohibited—Holding stock in corporation prohibited—Development of water power.—**The credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation; nor shall the state directly or indirectly, become a stockholder in any association or corporation, provided, that the state itself may control and promote the development of the unused water power within this state.

In the case of Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955), the Idaho Supreme Court addressed the question of whether the legislature could by statute authorize the State Board of Education to issue bonds for the construction of dormitories for Northern Idaho College of Education, which had been renamed Lewis-Clark Normal School by the time the case was decided. The court upheld the act against a constitutional challenge under art. 8, sec. 2:

> Moreover, the appropriation act here under consideration is safe from conflict with Idaho Const. art. VIII, sec. 2, providing that, "The credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation . . ." by the fact that such enactment is for a public purpose. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 [1953]. Further, the enactment is not invalidated, in light of its public purpose, merely because the obligation of the state in relation to the subject matter of such legislation is a moral rather than a mandatory one, nor by the fact that a private individual or organization may benefit thereby.

77 Idaho at 153-54, 289 P.2d at 618-19 (citations omitted). There is no doubt that education in Idaho is a public purpose, because art. 9, sec. 1 of the Idaho Constitution obligates the legislature "to establish and maintain a general, uniform, and thorough system of public, free common schools." The logical conclusion of the Davis rationale is that the extension of the state's credit to financing of public school facilities would not violate art. 8, sec. 2.

2. Community Colleges are not Included Within the Definition of "Public Education"

Question 2 observes that the summary of the petition states that the Initiative removes all maintenance and operation funding of community colleges from the property tax, but further observes that the term "community college" is not used in the text of the Initiative. Following this observation, you pose the question: "Are community colleges defined as public education?" The answer is no.

In terms of art. 8, the public indebtedness and subsidies article of the Idaho Constitution, although there is no authority directly on point, the likely extension of the Miller and Davis cases would be a holding that state support of community colleges would be an allowable public purpose for the use of state moneys under those articles. But, with regard to the specific question whether community colleges are public education under section 5.1 of the Initiative, which in the Initiative as written can fairly be equated to the question whether community colleges are public education under art. 9, sec. 1, the most likely answer is no. Davis cited both art. 9, sec. 1, and art. 10, sec. 1, for the proposition that educational institutions such as Northern Idaho College of Education (renamed Lewis-Clark Normal School at the time the decision was entered) are "established for no personal profit and serve only the public benefit." 77 Idaho at 153, 289 P.2d at 618. However, in context, it does not appear that the court was thereby deciding that post-secondary education such as community colleges were part of the "general, uniform and thorough system of public, free common schools" that the legislature is obligated to establish and maintain under art. 9, sec. 1. Instead, it appears that the court concludes that the state is authorized to establish post-secondary education such as normal schools under art. 10, sec. 1:

> **§ 1. State to establish and support institutions.—**Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the state in such a manner as may be prescribed by law.

Although there is no case law specifically addressing the issue, history suggests that the system of public education contemplated by art. 9, sec. 1, which presumably is the same system addressed by section 5.1 of the Initiative, includes only elementary and secondary education, not post-secondary education such as community colleges. *Cf.* ISEEO I, which held that the State Board of Education Rules and Regulations for Public Schools K-12 were consistent with the court's view of thoroughness. 123 Idaho at 583, 850 P.2d at 734. If community colleges were included within the constitutional requirement of public education, it is doubtful that state board rules for K-12 would have been adequate to provide for thoroughness. *See also*, Paulson v. Minidoka County School District No. 331, 93 Idaho 469, 471-72, n.3, 463 P.2d 935, 937-38, n.3 (1970) (high schools as well as elementary schools were within the contemplation of a system of common schools at the time of adoption of the Idaho Constitution, so high schools are part of system of schools referred to in art. 9, sec. 1). Similarly, the legislature's appropriation of funds dedicated to public schools established by art. 9, secs. 3 and 4, has been to elementary and secondary schools, not to community colleges. *E.g.*, 1995 Sess. Laws, ch. 85. History suggests that if community colleges were part of the constitutionally required system of public education, the legislature would have been

forced to appropriate money to community colleges from the dedicated school funds, but it has not done so.

Additionally, elementary, secondary and university educations were all known while Idaho was a territory and were within the contemplation of Idaho's constitutional convention and the populace that approved the Idaho Constitution. It appeared to be the contemporary understanding of those persons that elementary and secondary education was public education within the meaning of art. 9, sec. 1, but it does not appear that post-secondary education such as universities or community colleges were within the contemplation of art. 9, sec. 1. In fact, the University of Idaho was given a separate constitutional provision, art. 9, sec. 10, which strongly suggests that post-secondary education was not within the contemplation of "general, uniform and thorough system of public, free common schools" that the legislature is obligated to establish and maintain under art. 9, sec. 1. Moreover, community colleges were not authorized or established until years after statehood. From this one concludes that the courts will not construe section 5.1 of the Initiative to apply to community colleges.

3. The Initiative's Requirement That Taxes Be Collected by Counties and Apportioned According to Law to Taxing Districts Within the Counties is Inoperable

Section 1.1 of the Initiative states:

> The maximum amount of tax on all property subject to assessment and taxation within the state of Idaho shall not exceed one percent (1%) of the assessed value of such property, after all statutory exemptions applying to such property have been applied. The one percent (1%) shall be collected by the counties and apportioned according to law to the taxing districts within the counties.[7]

You ask how, under the Initiative, counties will collect and apportion taxes "according to law"? To address this question, one must first review how the tax collection system will work under law beginning January 1, 1997. Effective January 1, 1997, the governing property tax statutes will be as recodified by 1996 Session Laws, ch. 98 (H.B. 783).

a. Distribution of Revenues Under Law Effective January 1, 1997

Although each city, county or other authorized taxing district levies a discrete tax, the districts do not "set levies." Instead, each district develops a budget that determines how much revenue from property taxes the district will need during its next fiscal year. Each taxing district then "certifies" this dollar amount to the board of county

commissioners of the county in which the district exists. If the district is a multi-county district (if its boundaries overlap county boundaries), it apportions the total amount of revenue required from property taxes between the counties, based on the percentage of the taxing district's taxable value in each county. *See* Idaho Code § 63-803 (effective 1/1/97).

After receiving the certified budget, the board of county commissioners will calculate the tax levy which, when applied to the tax rolls, will meet the budget requirements certified by the taxing districts. *Id*.

The board's clerk must deliver one copy of the record of all levies to the State Tax Commission. Idaho Code § 63-808 (effective 1/1/97). The State Tax Commission must "carefully examine" this report to determine if any county has fixed a levy for any purpose not authorized by law or greater than the maximums provided by law. Idaho Code § 63-809 (effective 1/1/97). If the State Tax Commission finds any unauthorized or excessive levies, these must be reported to the prosecuting attorney (in the case of levies other than those imposed by the county) or to the attorney general (in the case of county levies). The prosecutor or the attorney general, as the case may be, is obligated to bring suit to have such levies set aside as unlawful. *Id.*

When these levies are approved, the auditor delivers the tax rolls with the tax computations to the county treasurer. Idaho Code § 63-811 (effective 1/1/97). The treasurer prepares tax notices and mails them to taxpayers by the fourth Monday of November. Idaho Code § 63-902 (effective 1/1/97). The notice must separately state the exact amount of tax due for each taxing district levying on the property to which the notice relates. *Id.*

All taxes collected by the treasurer are deposited into the county treasury and then are "apportioned" from the county treasury to each taxing district. Idaho Code §§ 63-903 and 63-1201 (effective 1/1/97). Because the tax bill displays how much the tax is for taxing district, each taxing district's apportioned share is simply the total amount collected for that district.

b. How the Initiative Would Affect the Levy, Collection and Apportionment of Taxes

It appears that section 6 of the Initiative intends to repeal existing laws that conflict with the Initiative's provisions. Further, the current version of the Initiative contains a limitation on the "annual budgets of cities, counties, and taxing districts." Subject to certain exceptions, these budgets may not grow by an amount "more than the increase in the cost of Social Security benefits for the budget year."[8]

In this regard, the current version differs from the 1991 version of the initiative, which contained neither repeal language nor a budget limitation. However, the current version of the Initiative does not provide any new or changed duties of the county auditor, the board of county commissioners or the State Tax Commission. These differences in the current version do not correct the basic flaw found in the version addressed in Attorney General Opinion 91-9. That is, neither existing law nor the Initiative itself contains any provision by which the requirement that taxes "be collected by the counties and apportioned according to law to the taxing districts within the counties" could be carried out. Attorney General Opinion 91-9 considered and rejected possibilities about what law to which the phrase "according to law" might refer. These included referring the collection and apportionment of taxes to the courts pursuant to Idaho Code § 63-917 (Idaho Code § 63-809 after 1/1/97) or that some official or board (described in Attorney General Opinion 91-9 as a "tax czar") may have legal authority to require cities, counties and taxing districts to reduce or eliminate budgets and levies to comply with the 1% limitation. Attorney General Opinion 91-9 concluded that neither option was a procedure available "according to law." 1991 Idaho Att'y Gen. Ann. Rpt. at 108. We continue to hold to the conclusion expressed then:

> The basic problem here is that the drafters of the proposed One Percent Initiative frame a standard that is, at bottom, only a slogan: "taxation within the State of Idaho shall not exceed one percent (1%) of the actual market value of such property." However, they fail to provide any entity with authority to adjust tax levies to meet this standard. They also fail to provide any procedural mechanism to carry out their proposal.
>
> We conclude that neither the existing statutes nor any provision of the One Percent Initiative expressly grants authority to the State Tax Commission to adjust levies and apportion taxes. Neither the Idaho Constitution nor the Idaho Code would permit imposition of such a duty on the courts. Finally, any attempt to centralize such authority in the boards of county commissioners would make the boards into local taxing czars and virtually destroy all the other independent taxing districts that now answer to the local electorate.
>
> It follows that the One Percent Initiative cannot be implemented as written. It is our opinion that a reviewing court faced with the options of striking down the One Percent Initiative or upholding the initiative by creating from whole cloth a new tax apportionment system for the State of Idaho would choose the former option.
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> Courts are driven to the extreme measure of striking down a statute only when "it is so unclear or confused as to be wholly beyond reason, or

> inoperable . . . ." *Gord v. Salt Lake City*, 434 P.2d 449, 451 (Utah 1967). The One Percent Initiative fits these criteria. There is no possible means to implement it "according to law." Consequently, a reviewing court would strike it down.

1991 Idaho Att'y Gen. Ann. Rpt. at 107-08. That conclusion is equally valid for the present version of the Initiative. Section 1.1 of the Initiative is not self-executing. If the Initiative passes, the implementation requires that the legislature extensively revise its text, the existing property tax laws, or both. Any legislative revision must also conform with other provisions of the Idaho Constitution, most notably art. 7, sec. 2 and sec. 5.[9] These sections require that property taxes be levied in proportion to the value of the property and uniformly on all property in the jurisdiction of the taxing district. These sections limit the legislature's choices for implementing the Initiative. Attorney General Opinion 91-9 illustrated the difficulties created by the combined effects of the Initiative and art. 7, sec. 5. It concluded that "the inevitable result [is] that property taxes in each taxing district will bear no rational relation to the needs of that district or to the wishes of the taxpayers of that district." Legislative implementation of the Initiative must resolve these problems.

4. The "Annual Budget" is the Entire Annual Budget Regardless of Source of Funding

Section 1.2 of the Initiative reads:

> The annual budget of cities counties and taxing districts may not be increased in any budget year by more than the increase in the cost of living index used for computing Social Security benefits for such budget year, unless authorized by a majority of the voters in such city, county or taxing district, voting in an election held for the purpose. Revenues generated by taxes on new construction and annexation are exempt from this limit.

Statutes enacted by Initiative have the same force and effect as statutes enacted by the legislature. Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1988); Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943). This being the case, it is reasonable to assume that the rules of statutory construction apply to Initiative construction as well. The first principle of statutory construction is that where the language of the statute is unambiguous, that language must be given effect and there is no occasion for construction. Church of Jesus Christ of Latter Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993); Otteson v. Board of Commrs of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985).

The Initiative clearly limits increases in the "annual budget of cities counties and taxing districts." This language is plain and unambiguous. "The annual budget" cannot be taken to mean "a portion of the annual budget."

If any further indication is needed that "annual budget" does not mean a part of the annual budget, note that statutes intended to apply only to that part of the budget funded by *ad valorem* taxes specifically so state. Idaho Code § 63-2220A, for example, reads:

> (1) Except as provided in subsection (2) of this section for tax year 1995, and each year thereafter, no taxing district shall certify a budget request to finance the ad valorem portion of its annual budget that exceeds the greater of: . . . .

(Emphasis added.)

The Initiative limits growth in the entire budget of a city, county or other taxing district, not a portion of the budget.

Those portions of the budget funded by fees, grants, gifts, federal payments in lieu of taxes, other tax revenues, revenue sharing, and any other source of funding are also affected. This limitation can have a significant impact. A library district, for example, may depend on grant money to upgrade its facilities or services. It is difficult, if not impossible, to budget for grant money since obtaining it is fraught with uncertainty. If grant money which has not been budgeted becomes available, however, it cannot be spent if spending the grant means the growth limitation in the Initiative is exceeded. The Initiative constrains a taxing district's entire budget.

5. The Initiative Conflicts With Property Tax Statutes and Possibly Other Statutes

Section 6 of the Initiative states:

> This law shall take effect for the year beginning January 1, 1997, any laws in conflict with this new section (63-923) are hereby repealed.

As noted above, statutes enacted through initiatives and statutes enacted by the legislature enjoy equal dignity. It is the law in Idaho that a statute providing for repeal of all inconsistent laws is effective to accomplish such repeal. State v. Davidson, 78 Idaho 553, 309 P.2d 211 (1957). This doctrine is known as "repeal by implication." It is not favored and will not be indulged if there is any other reasonable construction. State v. Martinez, 43 Idaho 180, 250 P. 239 (1926). Statutes, although in apparent conflict, are construed to be in harmony if reasonably possible. Cox v. Mueller, 125 Idaho 734, 874

P.2d 545 (1994). Only that part of an existing statute actually in conflict with a subsequent statute is repealed by implication. State v. Davidson, 78 Idaho 553, 309 P.2d 211 (1957) (holding that enactment of negligent homicide statute repealed the earlier voluntary manslaughter statute to the extent the earlier statute included homicide resulting from the improper operation of motor vehicles).

The conflict section of the Initiative does not expressly repeal existing Idaho Code § 63-923. The language of the preamble leaves no doubt it is the drafters' intent that existing Idaho Code § 63-923 be repealed and replaced by the language of the Initiative, but the Initiative does not expressly accomplish this purpose. Since the Initiative does not expressly repeal existing Idaho Code § 63-923, only those portions of the existing statute in irreconcilable conflict with the Initiative will be repealed by implication. The legislature, of course, could expressly repeal the existing section, thereby solving this problem.

The Initiative will not repeal Idaho Code § 63-2220A by implication. The principle feature of Idaho Code § 63-2220A is the three percent budget growth limitation placed on that portion of a taxing district's budget funded by *ad valorem* taxes. The Initiative limits growth in the entire annual budget to the cost of living index used to compute Social Security benefits. These provisions can be reconciled. If the cost of living index is under three percent, the Initiative provides the tight constraint. If the cost of living index exceeds three percent, Idaho Code § 63-2220A provides the tight constraint. Initiative and code sections may be regarded as complementary rather than in conflict.

Both the Initiative and Idaho Code § 63-2220A provided for an exception to the budget limitation for new construction. These provisions are not in conflict. Since Idaho Code § 63-2220B provides only for the creation of a new construction role, it is not in conflict with the Initiative.

In a greater sense, however, the Initiative may be read as conflicting with the principles of the entire property tax code. It is the opinion of this office that this Initiative, like its predecessor as reviewed in Attorney General Opinion 91-9, is unimplementable. It is unimplementable because it is in conflict with the basic principles of Idaho's property tax structure. Given a choice between effectively repealing Idaho's property tax code or holding that an initiative which ostensibly attempts only to modify a portion of that code cannot be implemented, a court is most apt to find the Initiative unimplementable.

The repeal provision in the Initiative may affect statutes other than the property tax code. Chapter 17, title 50, for example, permits local improvement districts to issue bonds which are then repaid by collecting "special assessments" levied against the

property lying within the local improvement district. (*See, e.g.,* Idaho Code § 50-1721A for use of the phrase "special assessment.") Bonds issued by local improvement districts are not effected by the provisions of art. 8, sec. 3 of the Idaho Constitution. Byrns v. City of Moscow, 21 Idaho 398, 121 P. 1034 (1912). Section 1.4 of the Initiative prohibits "special assessments" to repay indebtedness not approved pursuant to "art. 8, sec. 3 of the Idaho Constitution relating to bonds." Art. 8, sec. 3, requires that bonds for indebtedness be approved by a two-thirds vote of those persons living in the taxing district, unless the indebtedness is for "ordinary and necessary" expenses. It is likely, then, that bonds of local improvement districts issued after January 1, 1997, the effective date of the Initiative, will have to be approved by a two-thirds vote when neither the local improvement district code nor the Idaho Constitution require such a vote now.[10] The legislature, of course, may address this problem by amending affected statutes, the Initiative, or both.

6. Ordinary and Necessary Expenses are not Subject to Voter Approval Requirements

Attorney General Opinion 91-9 addresses the affect of the Initiative on urban renewal bonds. Rather than just refer to that portion of Attorney General Opinion 91-9, its language has been reproduced with appropriate modifications relevant to the current version of the Initiative.

Chapter 29, title 50, Idaho Code, known as the Local Economic Development Act, gives certain municipalities the authority to issue bonds. These bonds are repaid using a device commonly known as tax increment financing. The Initiative will have a serious impact on the ability to repay such bonds issued prior to the effective date of the Initiative.

Under the tax increment financing law, a municipality first creates an urban renewal agency which exercises authority over a given geographical area of a city. Idaho Code §§ 50-2005 through 50-2007, 50-2903 and 50-2904. The agency then issues bonds, the proceeds of which are used for urban renewal projects within the agency's geographic area. Idaho Code § 50-2909. The bonds issued represent a limited obligation of the agency, not the municipality. Idaho Code § 50-2910. Bonds issued pursuant to chapter 29, title 50, are repaid solely from a special fund established for the purpose. Idaho Code § 50-2909. The income stream used to replenish the special fund is generated mainly by dedicating property taxes above a certain base level to the fund. Idaho Code § 50-2908. The rationale is that the investment of the redevelopment agency in its geographic area encourages further development, thus raising tax revenues within the entire area. The tax upon the difference between the assessed value at the time the bonds were issued and subsequent years is applied to repayment of the bonds. Idaho Code §§ 50-2903(4) and 50-2908.

The Initiative would change the repayment structure set up by the Local Economic Development Act by lowering tax rates with corresponding reductions in the revenue available to repay bondholders. This raises the question whether the Initiative would violate Article I, Section 10 of the United States Constitution. That section specifically forbids any state to "pass any . . . law impairing the obligation of their contracts."

Bondholders of tax increment financing bonds would likely challenge the Initiative on grounds it impairs the obligation of contracts under the principles laid down by the United States Supreme Court in United States Trust Co. v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977), and Energy Reserves Group v. Kansas Power and Light, 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

On the other hand, we note that the California Supreme Court, in Amador Valley Joint Union High School District v. State Board of Equalization, 583 P.2d 1281 (Cal. 1978), upheld that state's one percent law, Proposition 13, against a challenge that it unconstitutionally impaired contractual obligations. The Amador court found that although there was a possibility of default on bonds, the default was not "inevitable" and new revenues might be found from other sources, such as legislative enactments, to prevent default. 583 P.2d at 1297. Amador seems to require actual default rather than merely "substantial impairment" as discussed in United States Trust Co. and Energy Reserves Group. Thus, if the Idaho Supreme Court were to find a substantial impairment but adopt the reasoning of the California Supreme Court in Amador, it would not find that the Initiative impaired the obligation of contracts, at least until actual default became inevitable. Rather, it would wait to see if other revenue became available such as through new legislation. This would leave open the possibility of future legislation to authorize some additional tax to repay existing bondholders. Indeed, this is what occurred in California following the adoption of Proposition 13. The immediate impact of Proposition 13 on existing projects financed by the issuance of bonds was severe. Schuster, Tax Allocation Bonds in California After Proposition 13, 14 Pac. L. J. 159, 177 (1983). Sixty-two percent of the projects supporting bond issues were unable to generate sufficient tax revenues to meet debt service on the bonds in the fiscal year following the effective date of Proposition 13. *Id.* Thus, those projects were forced to turn to other available revenues. For projects which were still experiencing hardship, the Local Agency Indebtedness Fund provided low-interest loans. The fund was established by the California Legislature to provide assistance to projects severely affected by Proposition 13. *Id.*

As to future tax increment financing, the Initiative would create uncertainty as to future tax revenues and, thus, the ability to repay the bonds. The practical effect would be the reduction of tax increment financing, since investors would presumably be reluctant to buy bonds which might not be repaid. However, it must be noted that in

California after the passage of Proposition 13, bonds issued after the effective date did not experience the same difficulty in generating sufficient tax increments to meet annual debt service as those issued before Proposition 13; the effects of which are described above. *Id.* at 178. Certainly, Proposition 13 reduced the amount of tax increments that a given redevelopment project can generate and, accordingly, has reduced the amount of bonds that can be issued in reliance thereon. However, tax increment financing has not been rendered obsolete in California. *Id.* It appears that the same would be the case in Idaho if the Initiative passes. There will certainly be a reduction in the number of urban renewal projects because of the lack of funds to pay the bonded indebtedness. Thus, tax increment financing will probably be still available, but to a limited extent.

The remainder of question 6 concerns the effect of the Initiative on judicially confirmed obligations which have been deemed by the court to be "ordinary and necessary" expenses. As you know, expenses which are deemed "ordinary and necessary" are excepted from the voter approval requirements of art. 8, sec. 3, Idaho Constitution. The Initiative states:

> The property tax limitations provided for in Section 1. No. 1 shall not apply to ad valorem taxes, or special assessments to pay the interest and redemption charges on any indebtedness or school plant facilities levies approved by the voters prior to the time this section becomes effective or any subsequent indebtedness approved pursuant to Article 8 Section 3 of the Idaho Constitution relating to bonds.

Because "ordinary and necessary" expenses are not subject to voter approval, they are not covered by the Initiative's exception for existing indebtedness. With regard to the Initiative's exception for subsequently approved indebtedness, the wording of the Initiative is somewhat ambiguous. Subsequent indebtedness is excepted from the property tax limitations if "approved" pursuant to art. 8, sec. 3, Idaho Constitution. One could argue that judicially confirmed "ordinary and necessary" expenses have been approved pursuant to art. 8, sec. 3, because they are excepted from that provision's requirements. However, it would appear that the drafters of the Initiative intended "approval" to mean "voter approval." Thus, subsequent indebtedness which is properly classified as "ordinary and necessary" expenses may not be covered by the Initiative's exception for subsequent indebtedness, because they are not subject to voter approval.

7. The Initiative Will Apply to Charter School Districts the Same as Other School Districts

Your final question is about the Initiative's application to charter school districts. The Idaho Supreme Court's holdings and dicta concerning charter school districts (and their close relatives, charter cities) have addressed related issues over the years. In

Howard v. Independent School District No. 1, 17 Idaho 537, 106 P. 692 (1910), the plaintiff taxpayer challenged the constitutionality of the Lewiston Independent School District. The Lewiston district had been created by an act of the territorial legislature and its charter had been amended by both the territorial and the state legislature. 17 Idaho at 539. The taxpayer contended, among other things, that the special charter creating Independent School District No. 1 of Nez Perce County (which is now commonly called the Lewiston Independent School District) was inconsistent with art. 9, sec. 1 of the Idaho Constitution. The court determined there was nothing in the organization or existence of an independent school district chartered by the territorial legislature that was in conflict with either the letter or the spirit of art. 9, sec. 1. 17 Idaho at 541-42. The court also observed that under art. 11, sec. 2, which prohibits special charters, except for municipal, charitable, educational, penal or reformatory corporations that are or may be under the control of the state, "the constitution recognizes the right of the legislature to extend, change and amend by special law the charter of educational corporations that were in existence at the time of the adoption of the constitution." 17 Idaho at 541.

In Common School District No. 2 of Nez Perce County v. District No. 1 of Nez Perce County, 71 Idaho 192, 227 P.2d 947 (1951), the court considered the question whether a special legislative act amending the Lewiston district's charter with regard to its annexation powers and annexation elections was unconstitutional. The challenge was brought under art. 3, sec. 19 of the Idaho Constitution, which prohibits the legislature from passing local or special laws in thirty-two subject matter areas, including: "providing for and conducting elections, or designating a place of voting." The court began its discussion of the constitutionality of the special legislation with this statement:

> Special charters of cities and school districts ante-dating the constitution survived it, and such political entities since its adoption have constitutionally and legally operated thereunder, and amendment of such charters may be made only by local and special laws which are not inhibited by Art. 3, Sec. 19.

71 Idaho at 195, 227 P.2d at 948. The court upheld the amendment to the district's charter against constitutional challenge as special legislation. It is clear from these two cases that charter districts' charters may be amended by local or special statutes so long as those statutes do not contravene a specific prohibition of art. 3, sec. 9, but cannot be amended by laws of general application. But this rule of law requiring that a charter be amended by special act does not answer the question whether a provision in a charter district's charter may be overridden by an inconsistent provision of general statutory law.

In Independent School District of Boise City v. Callister, 97 Idaho 59, 539 P.2d 987 (1975), the court considered a charter school district's claim that the Idaho Tort

Claims Act did not apply to it because its special charter had not been amended to that effect. The court rejected this argument:

> Plaintiff below argues first that because the Independent School District of Boise operates by virtue of a charter from the Idaho territorial legislature it is not subject to the notice of claim requirement of the Idaho Tort Claims Act because such is general legislation and only special legislation affects the said independent school district. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942). *Bagley*, however, provides that the provisions of a special charter supersede and prevail over any inconsistent provisions contained in general law pertaining to matters of a local concern. We find no provision of the tort claims act to be inconsistent with any provision of the special charter of the school district. The legislature included all public corporations within the definition of a "political subdivision" for purposes of the Idaho Tort Claims Act. Therefore, we hold that the statutory notice of claim requirement does apply to the Boise Independent School District.

97 Idaho at 61-62, 539 P.2d at 989-90.

Bagley v. Gilbert, 63 Idaho 494, 122 P.2d 227 (1942), which the court cited in Independent School District of Boise City, involved inconsistencies between the general laws and the charter for Boise City:

> First, the charter provides that Ada County shall pay over to Boise City all city tax moneys as fast as the same are collected, whereas the general law provides that Ada County shall apportion the monies so collected once a month to the various tax units. Second, the charter as amended . . . provides that Boise City shall pay to Ada County *one-half of one per cent* of the amount of city taxes collected and such payment shall be in full for services rendered by the county officials, whereas the general law provides that the county shall retain *one and one-half per cent*, and apportion such sum to the county current expense fund.

63 Idaho at 499. The court further observed that the general acts at issue in that case did not specifically refer to the Boise City Charter. 63 Idaho at 499-500. After noting that the Boise City Charter can be amended only by a special act of the legislature specifically referring to the charter both in the title and in the body of the act, the court set forth the following rulings of law:

> The rule would seem to be well settled in this jurisdiction that the provisions of a special charter such as granted to the city of Boise

> supersede and prevail over any inconsistent provisions contained in the general law pertaining to matters of a local concern. The distinction between the two cases, *In re Ridenbaugh*, 5 Idaho 371, 374, 49 Pac. 12 [1897], and *Boise City Nat. Bank v. Boise City*, [15 Idaho 792, 100 Pac. 93 (1909)], lay in the fact that by one act, the legislature declared the subject matter of the act to be one of state concern and declared a policy of the state with respect thereto which withdrew subject matter from the province of local administration, and the other act merely related to local administration and delegated the determination of local questions to local authorities. When the legislature declares a matter to be of general state concern and declares a public policy with respect thereto, such general state law will prevail over any special city charter provisions to the contrary.

63 Idaho at 500 (citations omitted). The court applied these principles in Bagley by holding that the legislature had not expressed a general public policy to require charter cities to conform to the general law with regard to counties turning over tax receipts to cities, and the courts would not require a general law inconsistent with the charter to supersede the charter provisions.

The two cases that Bagley contrasted were In re Ridenbaugh, 5 Idaho 371, 49 P. 12 (1897), and Boise City Nat. Bank v. Boise City, 15 Idaho 792, 100 P. 93 (1909). In Ridenbaugh, the trial court had convicted Ridenbaugh of the crime of conducting a gambling game, in violation of a state criminal statute. Ridenbaugh petitioned the Idaho Supreme Court for *habeas corpus*, contending that he was legally conducting his gambling game under a license issued by the Boise City Clerk because Boise City's territorial charter authorized the city to license and regulate gambling houses. The court framed the issue as follows:

> It is conceded by counsel that the decision of this case depends upon the provisions of the constitution and laws of this commonwealth. The city of Boise was incorporated by a special act of the legislature, [which] . . . empowered [the city] to license gambling-houses . . . . The authority of the city council, by ordinance, to license gambling-houses continued, at least, to the eighth day of May, 1897, at which date a general law prohibiting gambling went into effect. Said act prohibiting gambling . . . expressly repeals all acts or parts of acts inconsistent with the provisions of said act . . . . It is also conceded that the only question for decision in this case is: Did the general law prohibiting gambling repeal that provision of the city charter empowering the city council to license gambling?

5 Idaho at 374.

The court concluded that the general law, although inconsistent with the Boise City Charter, prevailed over the Boise City Charter for the following reasons:

> But the legislature did not intend that said anti-gambling act should apply only to part of the state. It was intended as general law applying equally to the entire state . . . . The act amending sections 3, 5 and 11 of the charter of Boise City, approved March 12, 1897, provides that the city council may pass ordinances not repugnant to the constitution and laws of the United States, or the laws of this state necessary or convenient for carrying the powers and authority granted into effect. . . . Thus, it is shown by the original charter of Boise City, also by section 2 of article 12 of the constitution, and the act amending the charter of Boise City, that it was not the intention of the legislature or the framers of the constitution to empower the council of incorporated cities and towns to pass ordinances in conflict with the general laws of the state. . . . It was not the intention to permit or authorize the councils of incorporated cities to legalize, by ordinance, acts prohibited as criminal by the general criminal laws of the state, or to enforce ordinances in conflict with the general law. In case of a conflict the ordinance must give way. The ordinances authorized by the charter of Boise City must be in harmony with the general laws of the state. . . . The judgment of this court is that the discharge of the petitioner is denied, and he is remanded to the custody of the sheriff of Ada County.

5 Idaho at 375-76. Accordingly, the court concluded that Boise City's specific charter provision authorizing licensing of gambling houses fell to a general statutory provision prohibiting gambling, even though the general statutory provision did not refer to charter cities in any regard, in part because the general provision expressly repealed all inconsistent acts or parts of acts.

In contrast, in Boise City National Bank the court considered a test challenge to the validity of sewer improvement bonds that the city intended to issue. The issue before the court was whether bonds could be issued solely under the provisions of a 1907 amendment to the Boise City Charter or whether a general 1905 law would supplement the terms of the 1907 amendment to the city charter. 15 Idaho at 797. The court ruled:

> We think it clear that the powers of Boise City in regard to creating indebtedness and paying the same must be determined by the provisions of its charter, and not by the provisions of said bonding act of 1905, which is a general law applicable to all cities incorporated under the general law for incorporating towns and cities.

15 Idaho at 799. The court observed that the 1907 amendment of the Boise City Charter was complete in itself, 15 Idaho at 800, that the state constitution contemplated that special charters will be amended by special acts only, not general laws, 15 Idaho at 801, and that there is nothing in the 1905 general act indicating that it was proposed to affect or amend the Boise City Charter, 15 Idaho at 804.

The sum of Ridenbaugh and Boise City National Bank is that a general statute that expressly provides that inconsistent laws are repealed will govern and override specific provisions of territorial charters to the contrary, but a statute less strongly worded as a statement of public policy will probably not override inconsistent provisions of charter cities or school districts.

Section 6 of the Initiative provides: "This law shall take effect for the year beginning January 1, 1997, any laws in conflict with this new section (63-923) are hereby repealed." The Initiative has a clear policy statement that all inconsistent laws are to be repealed. The Ridenbaugh rule, which was cited in Bagley, and Bagley, which was in turn cited in Independent School District of Boise City, should still be good law and should be applied.

Therefore, although under Common School District No. 2 and earlier cases it is the law that a school district charter can be amended only by special law, under Ridenbaugh, Bagley and Independent School District of Boise City it is the law that a general law supersedes and prevails over inconsistent special charter provisions contained when the general law addresses matters of more than local concern and when the general law expresses an intention to repeal other laws in conflict. The Initiative addresses property taxes, indebtedness, etc., throughout the state and for "all public education" and repeals "any laws in conflict . . . ." That being the case, special charter provisions inconsistent with the Initiative should yield to the Initiative under the Ridenbaugh-Bagley-Independent School District of Boise City precedents. It is most likely that the courts will hold that the Initiative applies to charter school districts (and also to charter cities), notwithstanding any contrary provisions of their charters.

AUTHORITIES CONSIDERED

1. United States Constitution:

Art. I, sec. 10.

2. Idaho Constitution:

Art. 3, sec. 9.
Art. 3, sec. 19.

Art. 7, sec. 2.
Art. 7, sec. 5.
Art. 8, sec. 1.
Art. 8, sec. 2.
Art. 8, sec. 3.
Art. 9.
Art. 9, sec. 1.
Art. 9, sec. 3.
Art. 9, sec. 4.
Art. 9, sec. 10.
Art. 10, sec. 1.

3. Idaho Code:

§ 50-1721A.
§ 50-2005.
§ 50-2006.
§ 50-2007.
§ 50-2903.
§ 50-2904.
§ 50-2908.
§ 50-2909.
§ 50-2910.
§ 63-803.
§ 63-808.
§ 63-809.
§ 63-811.
§ 63-902.
§ 63-903.
§ 63-917.
§ 63-923.
§ 63-1201.
§ 63-2220A.
§ 63-2220B.

4. Idaho Cases:

Bagley v. Gilbert, 63 Idaho 494, 122 P.2d 227 (1942).

Boise City Nat. Bank v. Boise City, 15 Idaho 792, 100 P. 93 (1909).

Byrns v. City of Moscow, 21 Idaho 398, 121 P. 1034 (1912).

Church of Jesus Christ of Latter Day Saints v. Ada County, 123 Idaho 410, 849 P.2d 83 (1993).

Common School District No. 2 of Nez Perce County v. District No. 1 of Nez Perce County, 71 Idaho 192, 227 P.2d 947 (1951).

Cox v. Mueller, 125 Idaho 734, 874 P.2d 545 (1994).

Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955).

Howard v. Independent School District No. 1, 17 Idaho 537, 106 P. 692 (1910).

Idaho Schools for Equal Educational Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993).

In re Ridenbaugh, 5 Idaho 371, 49 P. 12 (1897).

Independent School District of Boise City v. Callister, 97 Idaho 59, 539 P.2d 987 (1975).

Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943).

Nelson by and Through Nelson v. City of Rupert, — Idaho —, 911 P.2d 1111 (1996).

Newland v. Child, 73 Idaho 530, 254 P.2d 1066 (1953).

Otteson v. Board of Commrs. of Madison County, 107 Idaho 1099, 695 P.2d 1238 (1985).

Paulson v. Minidoka County School District No. 311, 93 Idaho 469, 463 P.2d 935 (1970).

State v. Davidson, 78 Idaho 553, 309 P.2d 211 (1957).

State v. Martinez, 43 Idaho 180, 250 P. 239 (1926).

State *ex rel.* Miller v. State Board of Education, 56 Idaho 210, 52 P.2d 141 (1935).

Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1988).

5. Other Cases:

Amador Valley Joint Union High School District v. State Board of Equalization, 583 P.2d 1281 (Cal. 1978).

Energy Reserves Group v. Kansas Power and Light, 459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

Gord v. Salt Lake City, 434 P.2d 449 (Utah 1967).

United States Trust Co. v. New Jersey, 431 U.S. 1, 97 S. Ct. 1505, 52 L. Ed. 2d 92 (1977).

6. Other Authorities:

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

1995 Sess. Laws, ch. 85.

1996 Sess. Laws, ch. 98 (H.B. 783).

Schuster, Tax Allocation Bonds in California After Proposition 13, 14 Pac. L. J. 159 (1983).

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[1] In many respects this Initiative is not self-executing. It neither identifies the source of funding nor does it appropriate any money to replace local property tax revenues for schools. Determining the source of funding and appropriating money is properly the role of the legislature. It is also worth noting that this Initiative may not guarantee current funding levels for any particular school district or current statewide funding levels.

[2] The other two chapters were those addressing (1) instructional programs and textbooks and (2) transportation.

[3] Section 1.4 of the Initiative provides: "The property tax limitations provided for in Section 1 No. 1 shall not apply to *ad valorem* taxes, or special assessments to pay the interest and redemption charges on any indebtedness or school plant facilities levies approved by the voters prior to the time this section becomes effective or any subsequent indebtedness approved pursuant to art. 8, sec. 3, of the Idaho Constitution relating to bonds."

[4] Section 3 of the Initiative provides: "Cities, counties and taxing districts may impose special taxes in excess of the one percent (1%) on such cities, counties and taxing districts by a two-thirds (2/3) vote of those voting in an election called for that purpose."

[5] If the Initiative passes, it may be school districts' local political decision not to issue debt in the future. However, although the Initiative is ambiguous on this issue, it does not appear to prohibit school districts from issuing debt in the future, even if funding for school facilities shifted to the state. For example, districts could issue debt for facilities not covered by state funding if they received the necessary two-thirds majority required by art. 8, sec. 3.

[6] Art. 8, sec. 3, has three provisions addressing bonds:

(1) "[A]ny city may own, purchase, construct, extend, or equip . . . off street parking facilities, public recreation facilities, and air navigation facilities, and for the purpose of paying the cost thereof, may, . . . with the assent of two thirds ($^2/_3$) of the qualified voters voting at an election for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law . . . ."

(2) "[A]ny city or other political subdivision of the state may own, purchase, construct, extend, or equip . . . water systems, sewage collection systems, water treatment plants, sewage treatment plants, and may rehabilitate existing electrical generating facilities, and for the purposes of paying the cost thereof, may . . . with the assent of a majority of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest thereof to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by such system, plants, and facilities, as may be prescribed by law . . . ."

(3) "[A]ny port district . . . may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, the revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes . . . and such revenue bonds not to be in any manner or to any extent a general obligation of the port district . . ., nor a charge upon the ad valorem tax revenue of such port district."

[7] This language differs slightly from the language of the version of the 1% Initiative that was addressed in Attorney General Opinion No. 91-9. The language then said: "The maximum amount of all *ad valorem* tax on property subject to assessment and taxation within the State of Idaho shall not exceed one percent (1%) of the actual market value of such property. The one percent (1%) shall be collected by the counties and apportioned."

[8] See Sections 4 and 5 of this opinion for a discussion of these points.

[9] Art. 7, sec. 2, states:

> The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax, both upon natural persons and upon corporations, other than municipal, doing business in this state; also a per capita tax: provided, the legislature may exempt a limited amount of improvements upon land from taxation.

Art. 7, sec. 5, states:

> All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the state: provided further, that duplicate taxation of property for the same purpose during the same year, is hereby prohibited.

[10] Note that a similar analysis may apply to some funding for other types of districts as well. Drainage districts, for example, may be affected.