ATTORNEY GENERAL OPINION 99-2

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Honorable Dolores J. Crow, Chair
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Idaho House of Representatives
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Dear Senators Keough, Dunklin and Thorne and Representative Crow:

Each of you requested an Attorney General's Opinion on closely related issues about the proper application of the Idaho Constitution's requirement that "bills for raising revenue shall originate in the house of representatives." This opinion responds to all three requests.

QUESTIONS PRESENTED

1. Must a bill to amend a property tax exemption for certain agricultural property by removing apparently limiting language, thereby presumptively expanding the exemption, originate in the House of Representatives? (Senator Keough)

2. Whether a bill to exempt a non-profit, charitable organization from sales tax was properly printed and considered in the Senate Local Government and Taxation Committee. (Senator Dunklin)

3. "The Revenue and Taxation Committee respectfully requests an Attorney General's opinion regarding the constitutionality of starting all tax bills, both

adding and taking from the revenue base, in the house of representatives." (Representative Crow)

CONCLUSIONS

Prudence requires that bills potentially affecting general revenues be introduced in the house of representatives. The existing authority interpreting article 3, section 14 of the Idaho Constitution ("the Origination Clause") is both sparse and ambiguous. This lack of definite guidance strongly counsels a cautious approach that favors introducing doubtful bills in the house or adding senate amendments to revenue bills originating in the house if that can be done consistently with the Idaho Constitution's provision limiting bills to one subject.

A strong, but not certain, case can be made (contrary to prior guideline letters issued by this office) that the Idaho Supreme Court would follow the general rule that revenue bills are those that levy taxes, in the strict sense of the word, and not bills for other purposes which may incidentally create new revenue. However, existing Idaho authority suggests the Idaho Supreme Court may find bills to be revenue bills that would not be so classed by other courts.

The only Idaho case addressing the subject seems to favor the rule that a bill having the effect of raising less revenue in the future than was raised in the past is still a bill raising revenue and therefore must originate in the house.

An additional complication relates to property tax bills, such as S.B.1219 (about which Senator Keough inquires), because article 7, section 6 of the Idaho Constitution prohibits the legislature from raising property tax revenues for local governments. This might mean that bills relating to property taxation could not be revenue bills. The Idaho Supreme Court, however, has not ruled on this possibility so it cannot be clearly said to be the law of the State of Idaho.

ANALYSIS

A. Considerations Guiding the Analysis

This opinion reflects a particularly cautious approach by recommending a more expansive understanding of what is a revenue bill. Because it is also possible to justify a more limited understanding (which would allow additional types of bills to be introduced in the senate), it is important to express the reasons for this caution.

First. This opinion keeps in mind Justice Harlan's comment about the Origination Clause of the U.S. Constitution in Twin City Nat'l Bank v. Nebaler, 167 U.S. 196, 202 (1897), "What bills belong to that class [of bills raising revenue] is a question of such

magnitude and importance that it is the part of wisdom not to attempt, by any general statement, to cover every possible phase of the subject."

Second. Most of the knowledge about Idaho's Origination Clause must be drawn from Dumas v. Bryan, 35 Idaho 557, 207 P. 720 (1922). In addition to being over 75 years old, that case is subject to differing understandings.

Third. Legislative reliance on a less cautious opinion may result in the enactment of invalid laws if, as several guideline letters from this office suggest, the Idaho Supreme Court ultimately rejects the more limited interpretation that "revenue bills" are only those that levy taxes.

Fourth. Any controversy finding its way into court will involve a law requiring payment of money to the government. To justify litigating the issue, the amounts are likely to be significant. If the law resulted from a senate bill that is found to be a revenue bill that should have originated in the house, the law will be void. *See* Dumas, 35 Idaho at 564, 207 P. at 722. Those who paid the money will be due refunds. *See*, *e.g.,* Idaho Code § 63-3067 (1998). If the case is a class action, the resulting depletion of the state treasury by refunds could be large. *See*, *e.g.,* Ware v. Idaho State Tax Commission, 98 Idaho 477, 483, 567 P.2d 423, 429 (1977).

Fifth. Mistakes are easily avoided. Resolving questions of doubt in favor of originating bills in the house removes any taint of unconstitutionality under the Origination Clause.

B. Introduction

Article 3, section 14 of the Idaho Constitution provides:

> Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

(Emphasis added.) The Idaho Constitutional Convention in 1889 adopted this section without debate or amendment. Proceedings, Constitutional Convention, Vol. II, p. 1227.

The federal Constitution, and the constitutions of many states, contain similar origination provisions. *See* Dumas, 35 Idaho at 564, 207 P. at 722. "The requirement that revenue bills must originate in the House of Representatives is historically derived from Parliament's long struggle with the Crown for control of the purse-strings of the English Empire." Worthen v. State, 96 Idaho 175, 178, 525 P.2d 957, 960 (1974). The Origination Clause of the federal Constitution (Art. I, § 7) accomplished two purposes. First, it was one of several important "counterpoises" to the additional authorities

conferred upon the Senate, such as the trying of impeachments, confirmation of executive appointments, and ratification of treaties. The Federalist No. 66 (Alexander Hamilton); Millard v. Roberts, Treasurer of the United States, 202 U.S. 429 (1906). Second, it ensured that the branch of the national legislature most representative of the people, the House of Representatives, would have to take the political initiative of taking more money from the people through taxation. *See* Dumas, 35 Idaho at 563, 207 P. at 723. *See also*, T. Jipping, TEFRA and the Origination Clause: Taking the Oath Seriously, 35 Buff. L. Rev. 633, 649 (1986).

C. Decisions of the Idaho Supreme Court

The Idaho Supreme Court has decided only a few cases involving challenges under the Origination Clause. Consequently, there is sparse guidance from which to draw concrete conclusions. Any definite answers to the questions presented must be drawn from only three significant cases in which the Idaho Court has ruled on the Origination Clause. These cases need some examination and explanation and can be briefly summarized.

1. Worthen v. State, 96 Idaho 175, 525 P.2d 957 (1974)

The plaintiffs challenged, under the Origination Clause, the 1972 enactment of House Bill 789. *See* Worthen v. State, 96 Idaho 175, 176, 525 P.2d 957, 958 (1974), *citing* 1972 Idaho Sess. Laws 1149. The bill made significant changes to Idaho's Income Tax Act. Although the bill originated in the house of representatives, the senate added two significant amendments. *See* Worthen, 96 Idaho at 177, 525 P.2d at 952. The first repealed the individual deduction for federal income taxes (thereby increasing the amount of Idaho tax due from individuals). *Id.* The second increased the corporate income tax rate from 6% to 6.5%. *Id.* The challenge to the senate's right to amend a revenue bill originating in the house arose because of the difference between the federal and state versions of the Origination Clause. As the Idaho Supreme Court explained:

> The United States Constitution has a similar provision in art. I, § 7,
>
> "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other bills."
>
> The United States Constitution's provision for revenue bills differs from the Idaho provision in that it specifically provides that the Senate may amend revenue bills that originate in the House.

96 Idaho at 178, 525 P.2d at 961.

Despite the absence from Idaho's Origination Clause of language expressly authorizing senate amendment of revenue bills, the court concluded that the senate could do so, holding:

> Article 3, § 14 does not prohibit the Senate from denying passage of a revenue bill, and it does not specifically prohibit the Senate from amending a revenue bill. House Bill 789 began in the House as a revenue bill. Under a strict reading of art. 3, § 14 as argued by the appellants, the Senate could only veto House Bill 789 and could not have suggested the changes that the House subsequently concurred in. To prohibit the Senate from amending House originated revenue bills, would be an obstruction of the legislative process. Art. 3, § 14 must be read to require that revenue bills originate in the House, and that the Senate is permitted to amend such bills. House Bill 789 was not enacted in violation of art. 3, § 14. *Id.* at 179, 961. [1]

2. State ex rel. Parsons v. Workmen's Compensation Exchange, 59 Idaho 256, 81 P.2d 1101 (1938)

At issue in Parsons were worker's compensation benefits payable as the result of the work-related death of an employee. The relevant statute, originally enacted as a Senate bill, provided that if a deceased worker was without dependents (as was the case in *Parsons*), the death benefit was payable to the state treasury. *See* Parsons, 59 Idaho at 260, 81 P.2d at 1102. The surety liable to pay the benefits contended that this provision rendered the bill enacting that law a revenue bill that should have originated in the House. *Id.*

The Idaho Supreme Court rejected this position, holding that "we do not consider this provision of the act, either in part or as a whole, as a revenue act or as an act levying a tax." *Id.* The court reasoned:

> Now, as we understand this statute, it was the intention of the legislature that *compensation* should be paid by the employer or his surety *for every employee killed by accident* while engaged in the course of his employment. . . . When no one appears within a year who can qualify as a *dependent*, within the definition of the statute, then it is made the duty of the proper official to file a claim for the sum of $1,000 in behalf of the state. In other words, the state, as the *sovereign or parens patriae*, asserts its right to recover for the death of an employee, in the event no person qualifies as an actual dependent within the meaning of the statute. It certainly can not be gainsaid that the state has an interest in these employees, its subjects to whom it owes police and general welfare protection, which is equal to, if not superior to, the interests of some of the persons who are named as dependents. We know of no reason why the

> state may not be made a beneficiary under such a law as well as the persons designated as dependents. Had the decedent died a natural death and left an estate, and left no heir or person surviving him entitled under the succession statute to take his estate, the same would go to the state under the law of escheat (subd. 9, sec. 14-103, I.C.A.), which is as old as the common law; and no one would seriously question the right of the state to take such property. For like reasons we can see no constitutional objection to the state, in its corporate capacity as the sovereign or head of the governmental family, asserting its right to compensation from industry, in the case of the death of one of its subjects while engaged in the course of his employment, where no actual dependent exists.

59 Idaho at 261, 81 P.2d at 1102.

3. Dumas v. Bryan, 35 Idaho 557, 207 P. 720 (1922)

This is the most important and the most perplexing of the three Idaho cases decided under the Origination Clause. The facts were that in 1921 the legislature enacted a bill, which originated in the senate, providing for the transfer of the Albion Normal School from Albion to Burley. *See* Dumas, 35 Idaho at 562, 207 P. at 721 (*referencing* 1921 Idaho Sess. Laws 256). The first four sections of the bill provided the authorization and procedures of the change. *Id.* The fifth section levied a statewide property tax of one-eighth mill for two years to fund the move. *Id.* Opponents of the move challenged the entire statute on Origination Clause grounds. *Id.*

The court reviewed the then existing case law from other states applying similar state constitutional provisions. The court acknowledged:

> [M]any cases holding that where the revenue part of an act is merely an incident and not the principal purpose for which it was enacted, the fact that it contains a provision for raising revenue as an incident to such purpose does not make it a revenue law within the meaning of this constitutional provision.

35 Idaho at 564, 207 P. at 722.

The court's survey of then-existing case law included two cases analogous to the facts before it in the Dumas case. The court summarized these cases as follows:

> Thus in *Chicago, B. & Q. R. Co. v. School District No. 1*, 63 Colo. 159, 165 P. 260 (1917), an act amending a former law which established a system of public schools, and, as an incident to such amendment, provided for the raising of revenue to meet the requirements of the law as amended,

was properly held not to be an act for the raising of revenue, which under the Constitution must originate in the House of Representatives.

So in *Evers v. Hudson*, 36 Mont. 135, 92 P. 462 (1923), it is held that an act authorizing the establishment of county free high schools, and providing for a tax to supply funds for the current expenses of such schools and for bond issues to raise money for building or purchase of school property, authorizing the commissioners to make a tax levy upon all of the property for the support thereof, and limiting the funds so raised exclusively to this purpose, does not fall within the purview of this constitutional provision.

Id.

After reviewing this and other case law from other jurisdictions establishing the general rule that when the revenue raising part of a bill is merely incidental to the bill's main purpose the bill is not a revenue bill that must originate in the house, the Idaho Supreme Court ruled as follows:

> Section 5 of this act is a measure for raising revenue; that is, it is a revenue bill, or money bill, as those terms are usually used. It provides for levying a direct tax against all property in the state, for governmental purposes. It requires no argument to prove that the state maintains the Albion normal school in its governmental capacity. It will not do to say that this tax represents a mere incident to the main purpose of the bill, for this would be a mere evasion. Most revenue bills could in the same manner be made incidental. The amount of the tax levied is immaterial, for the Constitution requires that all bills for raising revenue shall originate in the House. This is as truly a tax levied for governmental purposes, as it would be if levied for the construction of a capitol building, an insane asylum, or for the support of any department of the state government, and therefore falls within the inhibition of article 3, § 14, of the Constitution.

35 Idaho at 566, 207 P. at 723 (emphasis added).

The Dumas court then concluded that the bill at issue was a revenue bill that, because it originated in the senate, was unconstitutional. *Id.* Because, without the revenue needed, moving the Albion Normal School was impossible; the invalid portion of the statute was inseparable from the remainder. Therefore, the court held, the entire statute was void. *Id.*

D. Discussion

These cases establish definite rules upon which the legislature can rely.

The Dumas case establishes that originating a revenue bill in the senate is a fatal flaw that can result in the enacted statute's being declared void if it is challenged. This is the majority rule in other states. *See* Morgan v. Murray, 328 P.2d 644, 654 (Mont. 1958). It is also the federal rule. *See* U.S. v. Munoz-Flores, 495 U.S. 385, 387 (1990). The exception appears to be Pennsylvania, which has held that because both branches of its state legislature are equally representative of the electorate, the constitutional commandment is procedural, not substantive, and therefore is left to the duty and conscience of the members of the legislature. *See* Mikell v. Philadelphia School District, 58 A.2d 339, 341 (Pa. 1948).

The Worthen case definitely establishes the right of the Idaho Senate to amend a revenue bill to add revenue-raising returns, but does not directly address the issues to which this opinion is directed.

The Parsons case establishes that not every statute that results in the addition of moneys to the state treasury is a revenue bill within the meaning of Idaho's Origination Clause. Although that case held that the worker's compensation provisions at issue in that case were not the result of a revenue bill, the case provides no analysis or discussion of what constitutes a revenue bill. However, the ruling is consistent with the general rule applied by federal courts and in other states. That general rule is "that revenue bills are those that levy taxes, in the strict sense of the word, and not bills for other purposes which may incidentally create new revenue." Twin Cities Nat'l Bank, 167 U.S. at 201 (*citing* Story, Commentaries on the Constitution § 880); U.S. v. Munoz-Flores, 167 U.S. at 495, U.S. at 397. The Idaho court recognized that this rule is the general rule in Dumas. *See* 35 Idaho at 566, 207 P. at 723.

The confusion over Dumas arises because the court voided a statute primarily aimed at moving the Albion Normal School, but which also imposed a statewide property tax levy to fund the move. Attorney general guideline letters issued by this office have understood Dumas to reject the general rule:

> The general rule . . . is that if the revenue raising provisions are "incidental" to the main provisions of the act, it may originate in the Senate. This argument however specifically was rejected in *Dumas v. Byron*, ...

Guideline letters to Senator Fairchild dated Feb. 24, 1983, and to Senators Beitelspacher and Anderson dated Feb. 25, 1986.

This conclusion flows from the fact that the Dumas court, in explaining the general rule, summarized cases from other states (including the Montana and Colorado decisions discussed above) involving statutes that were similar to the statute in Dumas

but were held valid. That the Idaho court in Dumas then struck down the Idaho statute strongly implies that the court was indeed rejecting the rule that incidental revenue provisions do not make a bill a revenue bill.

If this is correct, then Idaho legislators may not reliably look to interpretations of origination clauses of either the U.S. Constitution or those of other states for guidance to help determine what kind of bills are revenue bills under the Idaho Constitution. Given the dearth of Idaho cases, there is virtually no reliable guidance available to legislators (or attorneys general and their deputies) for resolving close questions about where a bill must originate. Nevertheless, Dumas makes it clear that originating a bill in the wrong body can be fatal if it is successfully challenged.

There is another way to read the Dumas decision. That is that the court in Dumas did not reject the general rule. Instead, Dumas accepted the general rule, but concluded that the tax at issue in that case (a statewide property tax levy of one-eighth mill) was not "incidental." That is because the tax was a tax of general statewide application that was not limited to persons directly receiving benefit from facilities or services offered by the Albion Normal School. Several cases predating Dumas hold that the feature that characterizes bills for raising revenue is that such bills raise revenue for the general purpose of government and give no specific benefit in return. *See, e.g.*, Commissioner v. Bailey, 3 Ky. L.R. 110 (1881); U.S. v. Norton, 91 U.S. 566, 568 (1875) (*quoting* Story, J. in U.S. v. Mayo, 26 F. Cas. 1230 (C.C.D. Mass. 1813) (No. 15,755)) (law providing for postal money orders and imposing a fee was not a revenue bill); Northern Counties Invest. Trust v. Sears, 41 P. 931, 935 (Oreg. 1895) (law requiring fees from parties to legal proceeding not a revenue bill). *See also*, Lang v. Commonwealth, 226 S.W. 379, 381 (Ky. 1920) (law requiring county to pay fee for admissions to reformatory not a revenue bill); Kervick v. Bontempo, 150 A.2d 34, 36 (N.J. 1959) (law providing tax to retire state water bond not a revenue bill); Leveridge v. Oklahoma Tax Comm., 294 P.2d 809 (Okla. 1956) (law imposing excise tax on registration of used cars by a dealer was incidental to purpose of registration act and therefore not a revenue bill). This view explains the court's emphasis that:

> [t]his is as truly a tax levied for governmental purposes, as it would be if levied for the construction of a capitol building, an insane asylum, or for the support of any department of the state government, ...

Dumas, 35 Idaho at 566, 207 P. at 723.

In practice, the Idaho Legislature follows the rule that a bill that raises revenue only incidentally to its main purpose may originate in the senate. Examples from the 1999 session of the Idaho Legislature include: 1999 Idaho Sess. Laws 431 (S.B. 1029) (increasing the charge for a petition filed against a juvenile found to be within the purview of the Juvenile Corrections Act); 1999 Idaho Sess. Laws 423 (S.B. 1018)

(relating to licensure to practice optometry to authorize an increase in the fee for licensure); 1999 Idaho Sess. Laws 427 (S.B. 1020) (increasing the maximum fee for renewal of licensure as a podiatrist).

This practical approach is consistent with Justice Swain's *ipsi dixit* statement in U.S. v. Norton, 91 U.S. at 568, "It is a matter of common knowledge, that the appellative revenue laws is never applied to the statutes involved in these classes of cases." It is also consistent with the Idaho Supreme Court's determination that the worker's compensation death benefit at issue in the Parsons case did not result from a revenue bill. 59 Idaho at 260, 81 P.2d at 1102.

These conflicting ways of understanding Dumas counsel the Idaho Legislature to caution. While it is unlikely that the Idaho court will utterly reject the proposition that bills with only incidental revenue effects (like the senate bills described above) may originate in the senate, Dumas does suggest that the Idaho court may find bills to be revenue bills that would not be so classed by federal courts or courts of other states. Recently, the court has given a similarly strict construction to art. 20, § 2 of the Idaho Constitution prohibiting joining two constitutional amendments in a single ballot question. *See* Idaho Watersheds Project v. State Board of Land Commissioners, 1999 WL 179591 (Idaho April 2, 1999).

E. A Bill Having the Effect of Raising Less Revenue

The only Idaho case addressing the subject seems to favor the minority rule that a bill having the effect of raising less revenue in the future than was raised in the past is still a bill raising revenue and therefore must originate in the house.

In Dumas, the court cited Perry County v. Railroad Co., 58 Ala. 546, 547 (1877), holding that a bill for raising revenue is a bill providing for the levy of taxes as a means of collecting revenue. 35 Idaho at 563, 207 P. at 723. Hence, a bill for reducing taxes, if it provides for collecting revenue, is still a bill for raising revenue. The Alabama court has ruled consistently on this issue in several cases, most recently in Opinion of the Justices, 379 So. 2d 1267 (Ala. 1980).

Since the time of Dumas, only two other states, New Jersey and Oklahoma, have ruled on the issue. They have established rules contrary to the Alabama rule. *See* In Re Paton's Estate, 168 A. 422, 424 (N.J. Eq. 1933) (statute granting an exemption from an inheritance transfer tax for a gift to Princeton University was not a revenue bill); Thompson v. Huston, 39 P.2d 524, 526 (Okla. 1935) (bill reducing penalty on delinquent taxes was not a revenue bill).

Rulings by courts of three states over the course of a century and a quarter are a small basis for determining a majority and minority rule. Several factors recommend

following the Alabama rule that bills diminishing revenue must originate in the house. First is the recognition in Dumas that the Alabama rule was a part of the jurisprudential landscape at the time. Another is the deliberate inclination in this analysis to favor introduction of doubtful bills in the house to avoid Origination Clause challenges. Also important is the fact that whether a bill increases or diminishes revenue is itself sometimes a questionable matter.

Advocates of tax benefit proposals (tax exemptions, deductions, credits or refunds) sometimes support the proposal because the benefit will increase, not decrease, revenue. The assumption is that the benefit will act as an economic incentive, stimulating sufficient economic growth to generate enough new tax revenue to more than off-set the direct cost of the benefit. *See, e.g.,* statement of purpose and fiscal note to 1996 Idaho Sess. Laws 1446 (H.B. 873) (relating to expanding eligibility for the income tax credit payable to another state). There is no authority, judicial or otherwise, holding or suggesting that such an effect, if true, does or does not transform a tax benefit proposal into a revenue-raising bill.

F. Property Tax Bills

S.B. 1219 is an example of another problem that adds doubt to the proper resolution of this issue. The bill would expand a property tax exemption. Property tax exemptions do not necessarily result in either an increase or decrease of property tax revenues. The amount of property tax revenue raised by a local taxing district (such as a county or city) is most directly determined by its budget, not by its assessed valuation. *See generally* Idaho Code, ch. 8, title 63. If an exemption decreases the size of the base, then, mathematically, the amount of the levy goes up, generating the same amount of revenue for the district by increasing the tax bill for owners of non-exempt property in the district. The Idaho court observed in both Dumas and Worthen:

> The purpose of incorporating [art. 3, § 14] into the fundamental law is that laws for raising revenue are an exercise of one of the highest prerogatives of government, and confer upon taxing officers authority to take from the subject his property by way of taxation for the public good, a burden to which he assents only because of it being necessary in order to maintain the government, and the people have accordingly reserved the right to determine this necessity by that body of the Legislature which comes most directly from the people, the house of representatives.

Dumas, 35 Idaho at 563, 207 P. at 721; Worthen, 96 Idaho at 178, 525 P.2d at 960.

Since the creation or expansion of a property tax exemption will increase taxes for most property owners, such a bill can be viewed as being within the intent of the Origination Clause.

A property tax exemption may reduce revenue for those districts for which the increased levy exceeds a statutory levy limit. However, such an event is usually unforeseeable at the time a proposed property tax exemption is under consideration by the legislature.

There is an additional complication for property tax related bills. Courts in other states hold that an authorization to levy taxes is not itself a bill to raise revenue. Courts uniformly hold that acts creating incorporated towns or other political subdivisions of the state and granting the right to levy taxes are not acts for raising revenue. *See* Houston County v. Covington, 172 So. 882 (Ala. 1937); Chicago, B. & Q. R. Co. v. School Dist., 165 P. 260 (Colo. 1917); Harper v. Elberton, 23 Ga. 566 (1857); Rankin v. Henderson, 7 S.W. 174 (Ky. 1888); Livingston County v. Dunn, 51 S.W.2d 450 (Ky. 1932); Excelsior Planting & Mfg. Co. v. Green, 1 So. 873 (La. 1887); Evers v. Hudson, 92 P. 462 (Mont. 1907); Dickey v. State, 217 P. 145 (Okla. 1923); Ryan Co. v. State, 228 P. 521 (Okla. 1924); Protest of Chicago, R. I. & P. R. Co., 279 P. 319 (Okla. 1929); Mikell v. Philadelphia School Dist., 58 A.2d 339 (Pa. 1948); Day Land & Cattle Co. v. State, 4 S.W. 865 (Tex. 1887); Gieb v. State, 21 S.W. 190 (Tex. Crim. App. 1893).

Consistent with this idea is that the Idaho Constitution prohibits the legislature from raising revenue for local governments. *See* art. 7, § 6, Idaho Constitution; Leonardson v. Moon, 92 Idaho 796, 800, 451 P.2d 542, 546 (1969). This authority suggests—but does not hold—that bills affecting property tax matters can not be bills raising revenue since the legislature is prohibited from raising property tax revenues for local governments.

CONCLUSION

For these reasons, we counsel the legislature to adopt practices that remove or at least minimize the possibility that a bill, if enacted, could be successfully challenged on Origination Clause grounds. These practices would give to the term "bills for raising revenue" a broader rather than narrower understanding. They would prefer the introduction of doubtful bills, including bills granting tax benefits, in the house and limit the senate to initiating revenue measures in the form of amendments to revenue bills originating in the house. If bills with incidental revenue raising effects or bills changing the property tax system are introduced in the Senate, it should be with full knowledge of the possible, but not certain, implications under the Origination Clause in the event the enacted statute is judicially challenged.

AUTHORITIES CONSIDERED

1. United States Constitution:

Art. 1, § 7.

2. Idaho Constitution:

Art. 3, § 14.
Art. 7, § 6.
Art. 20, § 2.

3. Idaho Code:

Title 63, chapter 8.
§ 63-3067.

4. Idaho Session Laws:

1921 Idaho Sess. Laws 256 (S.B. 298).
1972 Idaho Sess. Laws 1149 (H.B. 789).
1996 Idaho Sess. Laws 1446 (H.B. 873).
1999 Idaho Sess. Laws 423 (S.B. 1018).
1999 Idaho Sess. Laws 427 (S.B. 1020).
1999 Idaho Sess. Laws 431 (S.B. 1029).

5. Idaho Cases:

Dumas v. Bryan, 35 Idaho 557, 207 P. 720 (1922).

Idaho Watersheds Project v. State Board of Land Commissioners, 1999 WL 179591 (Idaho April 2, 1999).

Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

State ex rel. Parsons v. Workmen's Compensation Exchange, 59 Idaho 256, 81 P.2d 1101 (1938).

Ware v. Idaho State Tax Commission, 98 Idaho 477, 567 P.2d 423 (1977).

Worthen v. State, 96 Idaho 175, 525 P.2d 957 (1974).

6. Federal Cases:

Hubbard v. Lowe, 226 F. 135 (1915).

Millard v. Roberts, Treasurer of the United States, 202 U.S. 429 (1906).

Twin City Nat'l Bank v. Nebaler, 167 U.S. 196 (1897).

U.S. v. Mayo, 26 F. Cas. 1230 (C.C.D. Mass. 1813) (No. 15,755).

U.S. v. Munoz-Flores, 495 U.S. 385 (1990).

U.S. v. Norton, 91 U.S. 566 (1875).

7. Other Cases:

Chicago, B. & Q. R. Co. v. School Dist., 165 P. 260 (Colo. 1917).

Commissioner v. Bailey, 3 Ky. L.R. 110 (1881).

Day Land & Cattle Co. v. State, 4 S.W. 865 (Tex. 1887).

Dickey v. State, 217 P. 145 (Okla. 1923).

Excelsior Planting & Mfg. Co. v. Green, 1 So. 873 (La. 1887).

Evers v. Hudson, 92 P. 462 (Mont. 1907).

Gieb v. State, 21 S.W. 190 (Tex. Crim. App. 1893).

Harper v. Elberton, 23 Ga. 566 (1857).

Houston County v. Covington, 172 So. 882 (Ala. 1937).

In Re Paton's Estate, 168 A. 422 (N.J. Eq. 1933).

Kervick v. Bontempo, 150 A.2d 34 (N.J. 1959).

Lang v. Commonwealth, 226 S.W. 379 Ky. 1920).

Leveridge v. Oklahoma Tax Comm., 294 P.2d 809 (Okla. 1956).

Livingston County v. Dunn, 51 S.W.2d 450 (Ky. 1932).

Mikell v. Philadelphia School Dist., 58 A.2d 339 (Pa. 1948).

Morgan v. Murray, 328 P.2d 644 (Mont. 1958).

Northern Counties Invest. Trust v. Sears, 41 P. 931 (Oreg. 1895).

Opinion of the Justices, 379 So. 2d 1267 (Ala. 1980).

Perry County v. Railroad Co., 58 Ala. 546 (1877).

Protest of Chicago, R. I. & P. R. Co., 279 P. 319 (Okla. 1929).

Rankin v. Henderson, 7 S.W. 174 (Ky. 1888).

Ryan Co. v. State, 228 P. 521 (Okla. 1924).

Thompson v. Huston, 39 P.2d 524, 526 (Okla. 1935).

8. Other Authorities:

The Federalist No. 66 (Alexander Hamilton).

Proceedings, Constitutional Convention, Vol. II, p. 1227.

Story, Commentaries on the Constitution § 880.

T. Jipping, TEFRA and the Origination Clause: Taking the Oath Seriously, 35 Buff. L. Rev. 633 (1986).

Dated this 19th day of July, 1999.

Sincerely,

ALAN G. LANCE
Idaho Attorney General

Analysis by:

THEODORE V. SPANGLER, JR.
Deputy Attorney General

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[1] It is worth noting a case presenting the converse situation. In Hubbard v. Lowe, 226 F. 135 (1915), the court invalidated a federal law because it originated in the senate, contrary to the constitutional provision, even though the revenue feature was added by amendment in the house of representatives.