

If Otter can't follow the law, change the law

Marty Trillhaase/Lewiston Tribune

Ask veterans of Idaho's Statehouse culture and you'll bump into this axiom: You shouldn't legislate by anecdote. In other words, you shouldn't change the rules for everyone just because one person couldn't follow them.

Case in point: Gov. C.L. "Butch" Otter's flawed veto of a bill outlawing instant horse racing terminals at race tracks in Garden City, Idaho Falls and Post Falls. Otter missed his five-day deadline to cancel out the bill.

Next the Senate compounded the error. First, Senate President Pro Tem Brent Hill, R-Rexburg, Senate Democratic Leader Michelle Stennett of Ketchum and Senate Secretary Jennifer Novak all placed entries in the Senate Journal documenting the governor had blown it.

Then the entire Senate proceeded as if Otter's veto stuck - and failed to override it.

Net result: It took a unanimous Idaho Supreme Court to direct Otter, the Senate and anyone else willing to look back to the Idaho Constitution, its laws, rules and customs - and throw out the veto. In the process, the Supreme Court also decided the state should compensate the Coeur d'Alene Indian Tribe for what it spent on lawyers to bring the lawsuit.

Wouldn't it have been simpler for Otter - or someone on his staff - to check out the rules and then practice them - as his predecessors had done for the preceding four decades?

What if the Senate had followed its own protocol and declared the law invalid? In effect, Idaho would be in the same place - the betting machines would be shut down - but no lawsuit would have been necessary.

Or at least what if Otter acknowledged his error rather than writing - as he did last month - that the Supreme Court "found my action invalid" but glossing over why the court took that step?

Instead, House Speaker Scott Bedke, R-Oakley, seems to be drawing a different lesson. As Kimberlee Kruesi of The Associated Press reported Friday, Bedke floated past legislative leaders his proposed draft to remedy the matter.

He wants more specific guidelines about how a governor's veto should be delivered - and how the Idaho secretary of state should authenticate a law in the event of a failed veto.

The tone of the measure seems to defer more to the governor, which when you think about it, is an odd thing to do if you're a leader of a competing branch of government.

So noted Senate Majority Leader Bart Davis, R-Idaho Falls, who questioned giving Otter any say in the matter.

"So just from a philosophy of preserving our independent, separate right to decide our own rules, why should I write a bill and let the governor decide what our rules should be?" Davis asked.

Why change the rules at all? asked Sen. Grant Burgoyne, D-Boise.

"They stood up. These statutes as written stood up and because they stood up, I would be very reluctant to change them," Burgoyne said. "Who knows what we'll get into if we change them? ... I just kind of take a conservative view of messing with what worked."

Of course, Burgoyne has to know the Legislature's tender treatment of Otter's flawed veto would not extend to a governor from the Democratic Party.

So Republicans are stuck with a governor who made an error in judgment and a GOP Senate majority that failed to stand up to him.

But how do you write a law or a rule that can compensate for that? Once you start down this path, when do you stop? How much faith do you have that this group wouldn't make things worse? - M.T.