

WILLIAM C. RODEN
Lawyer

599 West Bannock Street, Suite B
P.O. Box 2110
Boise, ID 83702-2110

Telephone: (208) 343-1231
Mobile: (208) 868-8113
Fax: (208) 321-1254

e-mail: broden1@qwestoffice.net

Of Counsel:
HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

April 30, 2015

The Honorable Lawrence Denney
Secretary of State
State of Idaho
P.O. Box 83720
Boise, Idaho 83720

RE : SENATE BILL 1011

Dear Secretary Denney:

The purpose of this letter is to respectfully request that, pursuant to Article IV, section 10 Constitution of the State of Idaho, and Section 67-505, Idaho Code, as Secretary of State of the State of Idaho, you certify, with reference to Senate Bill 1011, First Regular Session of the Sixty-third Legislature, based on the records of that session, as follows:

“Senate Bill 1011 having remained with the Governor five (5) day (Sundays excepted) and the legislature being in session, it has become a law on the 4th day of April, 2015.”

It is further requested that said law be deposited with the laws in your office, in accord with §67-505, Idaho Code.

As you are aware, I am registered as a lobbyist for the purpose of communicating with representatives of both the legislative and executive branches of state government on behalf of the Coeur d'Alene Tribe on matters of interest to the Tribe. The Coeur d'Alene Tribe is one of the proponents of passage of S 1011, and this letter is written, in part, to convey the Tribe's concerns as to the present status and implementation of S 1011.

However, on a personal level, I have been involved in Idaho legislative and other governmental matters since 1961. This letter also expresses my personal concerns, which I believe are shared by many of Idaho's citizens, as to the constitutional and statutory grounds, surrounding the Governor's "veto" process which were apparently intended to prevent implementation of S 1011. The merits of S 1011 are not the subject of this letter, although I agree with the over two-thirds of the legislators who originally voted for the bill. But, the constitutional provisions surrounding the manner by which legislation becomes law are significant and substantive, and should be of concern to all Idaho citizens. It is with that concern in mind that this letter is written. The office

of Secretary of State is a vital and important cog in the legislative process, and the clear mandates of law require your active involvement.

The request in this letter is based upon the following relevant and material factual record, as set forth in the official Journals of the First Regular Session of the Sixty-third Legislature of the State of Idaho:

1. S 1011 relevant and material history:
 - a. 01/23/2015 Bill introduced in the Senate
 - b. 01/26/2015 Reported printed and referred to State Affairs Committee
 - c. 02/13/2015 Reported out of Committee with Do Pass Recommendation
 - d. 02/17/2015 Passed Senate – 25-9-1
 - e. 02/18/2015 House received from the Senate, received first reading, and referred to State Affairs Committee
 - f. 03/18/2015 Reported out of Committee Without Recommendation
 - g. 03/26/2015 Passed House – 49-21-0
 - h. 03/27/2015 Returned to Senate from House Passed; enrolled, signed by the President, returned to House for signature of the Speaker
 - i. 03/30/2015 House Received from Senate; signed by the Speaker & Returned to the Senate; Reported signed by the Speaker & ordered delivered to the Governor;
 - j. 03/30/2015 Reported delivered to the Governor on 03/30/2015 at 4:54 PM.
 - k. 04/02/2015 Senate and House adjourned, but not the session, until 04/06/2015, at the hour of 1:30 PM.
2. The Senate Journal, of the Idaho Legislature, for Monday, April 6, 2015, shows the following:
 - a. At the Fourth Order of Business:
 - i. Communication from Senate President Pro Tempore, Brent Hill, showing return of S 1011 to his office at 8:52 am on April 6, 2015, and, the return of S 1011 being due at 4:54 pm on April 4, 2015, and “such deadline having passed, the provision of Article IV, §10 of the Idaho Constitution and Idaho Code §67-504 and 505 appear to apply.”
 - ii. Communication from Jennifer L. Novak, Secretary of the Senate, showing that S 1011 was not returned to the office of the Secretary of the Senate by 4:54 p.m. on April 4, 2015. The communication further states: “Other correspondence of legislation were slipped under my door and returned in accordance with Article IV §10 and Idaho Code §§67-504 & 505. Correspondence of legislation is routinely returned to me in this fashion.” The communication further states that no earlier return was attempted to her office, nor was she asked to receive such a return at any earlier date;
 - iii. Communication from Senator Michelle Stennett, Senate Minority Leader, showing that, to her knowledge, Senate Bill 1011 was returned to the office of the Senate Pro Tempore at 8:52 am on April 6, 2015 and to the best of her knowledge no earlier return was attempted or

effectuated to the Senate, nor was anyone asked to receive such a return at any earlier time. Further, Senator Stennett stated, and the Journal reflects, that “The return of S 1011, being due at 4:54 pm on April 4, 2015, and such deadline having passed, S1011 is law pursuant to the provisions of Article IV, Section 10 of the Idaho Constitution and Idaho Code Section 67-504 and 67-505.

- b. At the Eighth Order of Business, Messages from the Governor, a message from the Governor was received and entered upon the Journal, which, in part, states as follows:
 - i. “I hereby advise you that I have returned without my approval, disapproved and vetoed, the following Senate Bill, to-wit: S1011, within the time limited by law, the same having arrived in the Office of the Governor at the hour of 4:54 p.m. on March 30, 2015.”
 - ii. The message from the Governor states the Governor’s Objections to S 1011.
 - iii. The Governor did not, by message when the Senate returned to open session on April 6, 2015, notify the Senate that, during the legislative adjournment (but not for the session), he had delivered the bill, at any time prior to April 6, 2015, to the Senate presiding officer, a Senate clerk, or to any member of the Senate, as authorized by §67-504. Idaho Code.
3. The First Regular Session of the Sixty-third Legislature, adjourned *sine die* on Saturday, April 11, 2015.

The controlling Idaho law on this matter is clear.

Article IV, Section 10 of the Idaho Constitution reads:

“VETO POWER. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journals and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present in that house, it shall become a law, notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. ***Any bill which shall not be returned by the governor to the legislature within five days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it,*** unless the legislature shall, by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of

state within ten days after *such* adjournment (Sundays excepted) or become a law.”
(italics and emphasis added)

Further guidance and clarification, with reference to how delivery of the bill, with the Governor’s objections, may be made if the legislature has adjourned for the day, but not for the session, is found in §67-504, Idaho Code, and reads as follows:

“RETURN OF BILL DURING ADJOURNMENT. If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, *that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message notifies it of such delivery, and of the time when, and the person to whom, such delivery was made.*”
(italics and emphasis added)

No message was received by the Senate from the Governor, on April 6, 2015, the first day the Senate was again in session following its adjournment on April 2, 2015, notifying the Senate that delivery of S 1011 to the Senate had been made, as provided by §67-504, Idaho Code, i.e., to the Senate presiding officer, a Senate clerk, or to any of the 35 state senators, during the time the bill was in his possession prior to April 6, 2015. Such notification by the Governor is statutorily required to be made on the first day the legislative body is again in session, if, in fact, such delivery occurred.

The Idaho Supreme Court, in Cenarrusa v. Andrus, 582 P.2d 1083 (Idaho 1978), considered the issue of the return and delivery of a bill following legislative adjournment *sine die*. The Court stated:

“The executive’s part in the metamorphosis of a “bill” into law begins only when, after passage of the bill by the legislature, it has been presented to the governor. He can sign it, and it becomes law. *He can leave it unattended for five days, the legislature being in session, and it becomes law.* But if he does not approve, the legislature being in session, he can return it with his objections. *The act of returning it with his objections is the veto of the bill. Nowhere in the Constitution is the governor required to endorse the bill as “vetoed.”*” (emphasis added)

Although the Governor may have made his decision as to approval of the legislation prior to the expiration of five days from the date of delivery to him, and written his intended message to the legislature, it is clear that it is the act of *returning* the bill within the constitutionally required time, with his objections, that constitutes the veto, and the return, in this case, must be made

The Honorable Lawrence Denney

April 30, 2015

Page 5

within five days. Failure to do so results in the bill becoming law upon the expiration of the allowed time for return to the legislature and the bill is not subject to further legislative action.

While not controlling under Idaho law, the Minnesota Supreme Court had occasion to decide the validity of a bill that was returned and delivered back to the Senate outside the constitutional window provided for a governor's veto with strikingly similar facts to the present situation. State ex rel. Putnam v. Holm, 172 Minn. 162, 215 N.W. 200 (1927).

In Putnam, a Senate bill had been presented to the Governor on the Wednesday before Easter, and the time for return of the legislation was three days, rather than the five days allowed in Idaho, and with Sundays excepted, as in Idaho. The Senate adjourned for Easter weekend at the end of business on Thursday (adjourned only for the holiday weekend, not for the session), very similar to the facts at hand. The Minnesota Governor issued a veto message dated Saturday, but retained the bill and the veto message until it was delivered to the president of the Senate on Monday morning. In the suit that challenged the validity of the Governor's veto, the Minnesota Supreme Court held that the constitutional phrase "(Sundays excepted)" meant that only Sundays were to be excluded, and that Saturdays and other legal holidays, such as Good Friday, were not to be excluded. Therefore, the Governor's time to return the bill had expired on Saturday, and the bill had become law without the Governor's signature, when not returned to the Senate until Monday.

After careful review of the undisputed facts concerning the timeliness and effect of the constitutional and statutory requirements determining the effectiveness of the gubernatorial objections to S 1011, it is clear that the Governor's attempt to veto is invalid and S 1011 is now law. Pursuant to §67-505, Idaho Code, it is the duty of the Secretary of State, when a

“bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state in the following form: “This bill having remained with the governor five (5) days (Sundays excepted) and the legislature being in session, it has become a law this ____ day of __, _____,” which certificate must be signed by the secretary of state and deposited with the laws in his office.”

The Governor's message authenticates that S 1011 was delivered to his office on March 30, 2015, at the hour of 4:54 P.M., and the legislative journal clearly shows that the bill was not returned to the Senate until April 6th, 2015. The constitutional window for a valid veto expired on Saturday, April 4th, 2015.

The Honorable Lawrence Denney

April 30, 2015

Page 6

The duty enjoined upon you as Secretary of State, by the Idaho Constitution and the clear mandate of the applicable Idaho statutes, is not a discretionary duty. Although it has been reported by the local press that you intend to take no action with reference to S 1011, it is hereby respectfully requested that you carefully review the official record relating to the facts stated in the legislative journals and certify those facts as required by law, in the following form:

“S 1011 having remained with the Governor five (5) days (Sundays excepted) and the legislature being in session, it has become a law on the 4th day of April, 2015.”

And further, that upon such certification having been made, it is hereby requested that S 1011 be deposited with the laws in your office, as required by statute.

Respectfully submitted,

A handwritten signature in black ink that reads "William C. Roden". The signature is written in a cursive style with a long horizontal stroke at the end.

William C. Roden