



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

March 15, 2017

The Honorable Brent Hill
President Pro Tempore
Idaho State Senate
Statehouse
VIA HAND DELIVERY

Re: Amendments to H. 67 – Our File No. – 17-57132

Dear Pro Tem Hill:

This letter is in response to the inquiry of this office regarding the proposed amendments to H. 67. Specifically, it is asked whether these amendments and H. 67 meet the “one subject” requirement of Idaho Constitution, art. III, sec. 16. While it is impossible to predict how an Idaho appellate court would rule on this issue, a reasonable defense can be advanced that the amendments to H. 67 are rationally related to the adjustment of Idaho’s income tax rates and that those matters are interconnected and related in a sufficient manner to meet the one-subject requirement.

The relevant part of art. III, sec. 16, provides: “§ 16. Unity of subject and title. --- Every act shall embrace but one subject and matters properly connected therewith,” An act is in harmony with art. III, sec. 16, if it has but “one general subject, object, or purpose” and all of its provisions are “germane” to that general subject, and have “a necessary connection therewith.” *Cole v. Fruitland Canning Ass’n*, 64 Idaho 505, 134 P.2d 603, 606 (1943). Similarly, where all the provisions of an act are “related to and have a natural connection with the same subject, they may be united in one statute.” *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1, 4 (1940). The provisions of an act do not need to relate directly to the same subject. Rather, if the provisions relate “directly or indirectly” to the same subject, have a “natural connection” therewith, and are “not foreign to the subject expressed in the title,” they may be united. *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 188, 52 S. Ct. 548, 554, 76 L. Ed. 1038 (1932) (emphasis added).

The purpose behind the “one-subject” requirement is “to prevent the inclusion in title and act of two or more subjects diverse in their nature and having no necessary connection.” *Utah Power & Light Co.*, 286 U.S. at 188. Courts disregard “mere verbal inaccuracies, resolve doubts in favor of validity, and hold that, in order to warrant the setting aside of enactments for failure to

comply with the rule, the violation must be substantial and plain.” *Id.* at 187 (internal citations omitted). The purpose of this rule is to “prevent the inclusion of incongruous and unrelated matters . . . and to guard against inadvertence, stealth and fraud in legislation.” *Id.* A review of Idaho case law supports the conclusion that the great majority of all cases examining legislation and the one-subject requirement have upheld the enactment.

H. 67 Adjusts Income Tax Rates and Matters Related to Those Adjustments.

Statutory interpretation begins with an examination of the language, giving a statute’s words their plain and ordinary meaning. *State v. Hart*, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001). H. 67 is described in its title as an act “relating to income tax” and contains language adjusting the rates of income taxation, revision of the average high cost multiple, and making various technical corrections throughout the legislation. These amendments naturally collect under the singular umbrella of an adjustment of income tax rates.

“But One Subject”

Art. III, sec. 16 requires “but one subject,” but allows for “matters properly connected therewith.” Here, each section of the amendments to H. 67 deals directly with one core subject: *taxation*. The title and substance of the act cover income tax (§ 63-3024), corporate income tax (§ 63-3025), and taxable wage base and wage rates (§ 72-1350). An act is in harmony with art. III, sec. 16, if it has but “one general subject, object, or purpose” and all of its provisions are “germane” to that general subject, and have “a necessary connection therewith.” *Cole*, 64 Idaho 505, 508, 134 P.2d at 606. It appears that these matters are interconnected and rationally relate back to the subject matter of “adjustment of income tax rates.”

“Matters Properly Connected”

A review of the amendments to H. 67 reveal that each section deals directly with the core subject of the “adjustment of income tax rates.” The specific provisions of the amendments seem to fit within the constitutional standard of being “matters properly connected” with the subject of taxation. The provisions must have a “natural connection” with the subject. *Lyons*, 61 Idaho at 284. A direct relation is not necessary; so long as the provisions are “germane” and “not foreign to the subject expressed in the title,” the provisions may be united in one act. *Utah Power & Light; Lyons*, 61 Idaho at 284. The specific sections of the amendments to H. 67 cover income tax (§ 63-3024), corporate income tax (§ 63-3025), and taxable wage base and wage rates (§ 72-1350). These provisions are “not foreign” to the subject of adjusting income tax rates and thus may be combined in one act. *Utah Power & Light*, 286 U.S. at 187-88. This connectivity is supported by the practical realities of Idaho tax policy and law. The Idaho tax code is a “naturally connected” area of the law, to use the phrase in *Utah Power & Light*.

A Note of Caution

It is important to note that, while Idaho courts do not seem inclined to take an overly wooden approach to the one-subject requirement, the Idaho Supreme Court has indicated that an act


cannot merely have *something to do with* a particular topic; the act must have a common or unified "purpose" to be accomplished. *Am. Fed'n of Labor v. Langley*, 66 Idaho 763, 769, 168 P.2d 831, 834 (1946). Moreover, that "unity of purpose" must be "disclosed" directly or indirectly. *Langley*, 66 Idaho at 769, 168 P.2d at 834. Although there is flexibility within the one subject standard, that flexibility is reliant on a strong connecting tendon running throughout the legislation.

Conclusion:

The amendments to H. 67 do not clearly violate the "one-subject" requirement of art. III, sec. 16, Idaho Constitution. The provisions are all directly or indirectly related to the one subject of "adjustment to income tax rates." Recognizing the Court has adopted a more flexible, but not absolute, standard to uphold legislation under art. III, sec. 16., this office can provide a plausible defense under art. III, sec. 16.

I hope that you find this analysis helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'BRIAN KANE', with a long horizontal flourish extending to the right.

BRIAN KANE
Assistant Chief Deputy

BK/tjn