8-28-2017

City of ID Falls v. H-K Contractors, Inc. Appellant's Brief Dckt. 44886

IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF IDAHO FALLS, an Idaho municipal corporation, Plaintiff-Appellant, vs. H-K CONTRACTORS, INC., an Idaho Corporation, Defendant-Respondent.	)	No. 44886-2017 Bonneville County District Court No. CV-2016-6339

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

HONORABLE JOEL E. TINGEY
District Judge

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Nature of the Case

This is an appeal from an erroneous determination by the District Court that Idaho's governmental subdivisions are not part of the "state." This appeal turns on the rules of statutory construction and meaning of the general term "state," and the relevance, for the purposes of statutory construction, of previous decisions made by this Court interpreting a virtually identical term found in a related statute.

Procedural History and Statement of Facts.

On September 1, 2015, the Respondent, H-K Contractors, Inc. ("H-K"), delivered a signed and notarized Storm Drainage Agreement ("Agreement") to the Appellant, City of Idaho Falls ("City"). R Vol. 1, p. 5. On September 22, 2005, the Idaho Falls City Council approved and executed the Agreement. R Vol. 1, p. 5. As part of the Agreement, H-K agreed to convey a parcel of real property by March 1, 2010, to the City. R Vol. 1, p. 5, 13-22. Despite the fact that the City performed all of its obligations under the Agreement, H-K did not convey the property to the City, thus depriving the City of the benefit of the bargain. R Vol. 1, p. 5.

In early 2016 the City was evaluating the use and development of real property it managed for the public's use and benefit, when it discovered that the deed to the gravel pit had not been transferred by H-K, as required by the Agreement. R Vol. 1, p. 5, 24. The City then met with H-K on March 8, 2016, to

discuss the Agreement and then demanded performance in writing on March 9, 2016. R Vol. 1, p. 5, 24. On June 16, 2016, H-K refused in writing to convey the deed, stating an "unnamed City official" told H-K that he was no longer interested in acquiring the property for the City. R Vol. 1, p. 5, 27. In response to the City's inquiry into the identity and authority of the unnamed City official, H-K again refused to convey on August 12, 2016, stating that verbal communication was received from a "City official" releasing H-K from its obligation to perform and, in any event, the Statute of Limitations released H-K from its duty to perform the Agreement because the City government was not part of the "State of Idaho." R Vol. 1, p. 28.

On November 23, 2016, City, as authorized by Idaho Code § 50-301, filed a Verified Complaint to the District Court. R Vol. 1, p. 2. On December 19, 2016, H-K filed a Motion to Dismiss, pursuant to Rule 12(b)(6) of the Idaho Civil Service Rules, and brief in support of that motion. R Vol. 1, p. 29–39. The City objected and filed a brief in opposition to the Motion to Dismiss. R Vol. 1, p. 40–57. On January 19, 2016, the District Court issued an order holding that the rules of statutory construction prohibited the District Court from reviewing Idaho Supreme Court opinions interpreting the term "state" in Idaho Code § 5-225 as a general reference to Idaho's governmental entities, including Idaho's subdivisions. R Vol. 1, p. 75. As a result, the District Court held that the plain language of § 5-216 required finding

that the City of Idaho Falls did not fall under § 5-216's exemption from the five (5) statute of limitations for written contracts because the term "state" in § 5-216 applied the exemption only to the State of Idaho, and not its governmental subdivions. R Vol. 1, p. 75. The District Court then dismissed this case. R Vol. 1, p. 78.

The City of Idaho Falls then brought this appeal.

III. STANDARD OF REVIEW

A district court's dismissal of a complaint under Idaho Civil Procedure Rule 12(b)(6) is reviewed *de novo*. *Taylor v. McNichols*, 149 Idaho 826, 832 (2010).

IV. ISSUES PRESENT ON APPEAL

1. Did the District Court err in holding that the general term "state" in Idaho Code § 5-216 does not include the State of Idaho's governmental subdivisions, such as Idaho's cities and counties?

V. SUMMARY OF THE ARGUMENT

The District Court's order applying Idaho Code § 5-216 to the City of Idaho Falls and dismissing this case should be reversed because the District Court incorrectly held the rules of statutory construction prohibited it from reviewing this Court's prior interpretation of the exact same general term, the word "state." The rules of statutory construction require courts to ascribe the ordinary, plain meaning to words in statutes and the rules also require the court to interpret terms in related sections consistently in order to insure harmonious application of related

sections. Sections 5-225 and 5-216 are related because § 5-225 applies § 5-216 to all of Idaho's governmental entities. The District Court's interpretation of the general term "state" in § 5-216 is completely different than this Court's interpretation of the term "state" in § 5-225. Applying different meanings for the same word results in a jarring application of both sections and is in error.

The rules of statutory construction stand against the District Court's erroneous interpretation of the general term "state" as a reference to only the State of Idaho (and not its governmental subdivisions). For example, as this Court has observed, the plain language meaning of the general term "state" means Idaho's government in general. The rules of construction include the principle that the Idaho Legislature is aware of this Court's holdings and interpretations. The Legislature amended § 5-216 using virtually identical language as this Court previously interpreted in § 5-225. By doing so, the Legislature was demonstrating its intent to apply § 5-216's governmental exemption from the five (5) year limitation to all of Idaho's governmental subdivisions.

Even if the general term "state" does not include Idaho's governmental subdivisions—to which the State of Idaho expressly delegates its governmental power—the District Court erred by failing to give each part of § 5-216 a distinct meaning. The words that comprise the governmental exception identify two situations where the exemption applies. The first exemption is for contract lawsuits

that are brought "in the name" of the "state." The second exemption is for lawsuits seeking to enforce a contract "for the benefit of the state." A governmental subdivision of Idaho only exists solely to benefit the public by exercising the State of Idaho's delegated governmental authority. By managing a portion of the public's property, interest, and funds, Idaho's governmental subdivisions provide a direct benefit to the "state." Therefore, contracts held by Idaho's governmental subdivisions are exempt from § 5-216's five (5) year limitation.

Additionally, public policy requires suspending § 5-216's limitations application in situations where public property would essentially be transferred to a private interest. Transferring the public's property and funds for the benefit of a private interest (especially through the application of a statute of limitation) violates Idaho's constitution, no matter how trivial the transfer. Enforcing this statute of limitation against Idaho's governmental subdivisions will generate additional litigation and place additional legal and administrative burdens on Idaho's subdivisions.

VI. ARGUMENT

A. The District Court did not correctly apply the rules of statutory construction when it interpreted the general term "state."

The District court erred by failing to apply the plain meaning of the general term "state" in three (3) ways. First, the Court did not apply the rules of statutory construction correctly, which erroneously resulted in an unharmonious application

of two (2) Idaho Code sections that use virtually identical language. Second, the Court erred in determining that the general term "state" was not a reference to the government in general. Third, the Court erred in determining that the City's execution of managing its constitutional and legislatively directed duties did not "benefit the state."

1. Section 5-225 is the correct starting point to interpret the meaning of the general term "state" in § 5-216 because the rules of statutory construction require a harmonious definition to be used in related code sections.

As observed by this Court in *Blaine County v. Butte County*, there is a common law rule that exempts government from all statutes of limitations. 45 Idaho 193 (1927). However, it is well established that the Idaho Legislature may adopt statutes to repeal or modify the rules or doctrine of the common law. *See e.g. Mickelsen v. Broadway Ford, Inc.*, 153 Idaho 149, 152–53 (2012). The Idaho Legislature modified the common law governmental exemption from statutes of limitations by adopting Idaho Code § 5-225.[1]

When determining the effect of a statute of limitation on the State of Idaho's governmental subdivisions, the correct place to begin is with § 5-225's modification

[1] Idaho Code §§ 5-216 and 5-225 both date back to the beginning of the State of Idaho. Both sections have been renumbered several times since their adoption in 1881. For the sake of clarity, this brief will refer to the sections' numbering as they currently appear in the Idaho Code.

Section 5-225 was previously codified as § 165 in 1881; § 4061 in 1887 and 1909; and § 6618 in 1919.

Section 5-216 was previously codified as § 156 in 1881; § 4052 in 1887 and 1909; and § 6609 in 1919. Section 5-216 was amended in 1939 to include the exemption that is the central issue in this case.

of the common law. This Court did that very thing in *Bannock County v. Bell*, 8 Idaho 1 (1901). In *Bannock County*, the question was raised regarding whether § 5-225's use of the general term "state" applied Idaho's statutes of limitations to the State of Idaho's subdivisions. After reviewing the language of the statute, this Court determined that the Legislature had expressly intended the term "state" to be a general reference to government, which included every governmental subdivision of the State of Idaho. *Id.* For this reason, § 5-225 applies § 5-216 to the City.

The rules of statutory construction require courts to insure that they interpret terms in related sections consistently, in order to produce harmonious results between related statutes. *Ashely v. Dept. of Health and Welfare*, 108 Idaho 1, 2 (1985); *St. Luke's Magic Valley Reg. Med. Cntr. Ltd. v. Bd. Of Cnty. Com'rs of Gooding Cnty.*, 149 Idaho 584, 588 (2010) ("We do not view the Legislature as having intended the word "resources" to have different meanings within Chapter 35, Title 31."). As this Court explained in *St. Luke's Magic Valley Regional Medical Center v. Gooding County*, terms within different sections of the same chapter of the Idaho Code are presumed to bear the same meaning, "unless there is something to show that there is a different meaning intended, such as a difference in subject-matter which might raise a different presumption." 149 Idaho 584, 589 (2010).

The reason for construing related sections consistently is to avoid constructions of a statute that would result in absurd results. *State v. Yager*, 139

Idaho 680, 689–90 (2003) ("It is a fundamental law of statutory construction that statutes that are in *pari materia* are to be construed together.") The subject-matter in § 5-225 and § 5-216's exemption are the same, *i.e.* whether the "state" is exempt from Idaho's statutes of limitation.

Sections 5-225 and 5-216 both use virtually identical language to address whether the "state" is subject to a statute of limitation. Idaho Code § 5-225 states "The limitations prescribed in this chapter apply to actions brought in the name of the state, or for the benefit of the state, in the same manner as to actions by private parties." (emphasis added). The portion of § 5-216's language that is at issue in this case reads "[t]he limitations prescribed by this this section shall never apply to actions in the name or for the benefit of the state." (emphasis added). The virtually identical language of these two (2) related sections should be constructed together to give the same meaning to the term "state" so that both statutes have a consistent application.

There is no rule or fact in this case that overrides the general principle of statutory construction that terms within related sections have consistent meanings. *See Yager*, 139 Idaho at 689–90; *St. Luke's Magic Valley Reg. Med. Cntr. Ltd.*, 149 Idaho at 588. While statutes of limitations are generally liberally construed and exemptions to statutes of limitations are strictly construed, *see Mendini v. Milner*, 276 P. 313, 314 (Idaho 1929), applying different definitions to the same term leads

to absurd results. *Yager*, 139 Idaho at 689–90. Courts are required to interpret statutes so a harmonious application with consistent meanings across related sections is preserved. *Id.*

The District Court erred in concluding that it was not permitted to look to this Court's interpretation of the general term "state" in § 5-225 to interpret § 5-216. R Vol. 1, p. 74. Both of these sections have virtually identical language and both use the uncapitalized general term "state." The District Court erroneously reasoned that, because the language of § 5-216 (in its most narrow reading) was not ambiguous, it was "not permitted to look to extrinsic evidence of legislative intent regarding the meaning [of § 5-216] (including case law interpreting similar language)." R Vol. 1, p. 74.

The District Court's reading of § 5-216 resulted in a jarring, unharmonious application of both § 5-225 and § 5-216. The application of the District Court's erroneous order is this: *The word "state" in § 5-225 means "the State of Idaho and all of its subdivisions, including the City of Idaho Falls"; therefore, § 5-216 applies to the City Idaho Falls. Although § 5-216 exempts the "state" from its five (5) year statute of limitations, the word "state" doesn't refer to the City of Idaho Falls, because the word "state" in § 5-216 means "only the State of Idaho.* The District Court erred because, when applying both § 5-225 and § 5-216 together, Idaho's subdivisions <u>are</u> the "state" in § 5-225 and then they <u>are not</u> the "state" in § 5-216, depending which

section of Title 5 Chapter 2 the District Court applies. In reality, the general term "state" means all of Idaho's governmental entities no matter which section of Title 5 Chapter 2 is being read.

2. The Legislature's use of the general term "state" has a plain language meaning that refers to the government in general, in contrast to the plain meaning of more specific terms like "state of Idaho" or "political subdivisions."

The plain meaning of statutory terms must take generally accepted principles of English grammar into account to determine the Legislature's intent. *Ada Cnty. Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 354 (2013). The fact that the Legislature chose to use the uncapitalized general term "state" in §§ 5-216 and 5-225 indicates the Legislature intended these statutes to apply to all of Idaho's governmental entities.

The District Court's opinion incorrectly suggests that the Legislature intended the terms "state" and "political subdivisions" to occupy two (2) entirely distinct spheres simply because the Legislature has, on occasion, included those two terms in other statutory sections, including two (2) sections in Title 5, Chapter 2 of the Idaho Code: §§ 5-218 and 5-247. However, neither § 5-218 nor § 5-247 use the uncapitalized general term "state." Instead, each of these sections use specific terms and neither addresses exemptions from a statute of limitation.

Idaho Code § 5-218 does not use the general term "state." Instead, the Legislature uses the more specific terms "the state of Idaho" and "any political subdivision thereof." These terms are much more precise and specific than the general term "state," used in both §§ 5-216 and 5-225. In addition, the subject matter of § 5-218 is different than §§ 5-216 and 5-225. Section § 5-218 addresses when a statute of limitation begins to run against "the state of Idaho" and its "political subdivisions." Unlike §§ 5-216 and 5-225, both of which address whether a governmental entity is exempt from a statute of limitation.

Likewise, § 5-247 does not address a temporal statute of limitation at all. Instead § 5-247 is a manifestation of the Legislature's intent that the Idaho Attorney General's office be the only department of the State of Idaho that may file a lawsuit against a firearm manufacturer. Like § 5-218, the Legislature does not use the general term "state" in § 5-247. Instead, the Legislature opted for the more specific term, "governmental unit," and then provided a detailed definition for that term[2]. Thus, the Legislature intended § 5-216 to apply to all of Idaho's governmental entities by using the uncapitalized general term "state."

[2] Idaho Code § 5-247(1) - In this section, "governmental unit" means:
(a) A political subdivision of the state, including a municipality or county; and
(b) Any other agency of government whose authority is derived from the laws or constitution of this state

3. Idaho's cities are the "state" itself because their governing power is merely a delegation of the State of Idaho's own sovereignty and is limited by the Idaho Constitution and the Idaho Legislature.

When interpreting terms in a statute, Idaho courts give the words of the statute their plain, usual, and ordinary meaning. *State v. Taylor*, 160 Idaho 381, 385 (2016). The District Court erred in determining that the plain meaning of the term "state" referred only to the State of Idaho. As discussed above, the term "state" is a general term that, as this Court and other courts have held, is a plain reference to the government in general. *Bannock Cnty v. Bell*, 8 Idaho 1 (1901); *City of Bisbee v. Cochise Cnty*, 78 P.2d 982, 989 (Ariz. 1938).

Idaho's cities are part of the State of Idaho government and are included when the Legislature uses the general term "state." Idaho cities only derive their governmental authority from the Idaho Constitution. Idaho Const. Art. XII, §§ 1-4. The Idaho Constitution expressly identifies Idaho's cities as state subdivisions three (3) times. Idaho Const. Art. VIII, § 2(4) ("municipality" shall include any county, city, municipal corporation, . . . or other special purpose district or political subdivision of the state established by law.") (emphasis added); Idaho Const. Art. VIII, § 3 ("No county, city, board of education, or school district, or other subdivision of the state . . .") (emphasis added); Idaho Const. Art. VIII, § 4 (No county, city, town, township, board of education, or school district, or other subdivision . . .") (emphasis added).

The Idaho Legislature has expressly identified Idaho cities and counties as subdivisions of the state of Idaho more than twenty (20) times in the Idaho Code.[3] A typical example of the Legislature's many references to political subdivisions as the "state" appears in Idaho Code § 7-1303(6). In § 7-1303(6) the Legislature states that a "'[p]olitical subdivision' means the state of Idaho" including "any incorporated city . . . of the state of Idaho."

This Court has also recognized that cities, like counties, are subdivisions of the state. *Big Sky Paramedics, LLC v. Sagle Fire Dist.*, 140 Idaho 435, 437 (2004) (observing that cities are governmental subdivisions); *Village of Lapwai v. Alligier*, 78 Idaho 124, 128-29 (1956) (stating that in exercise of their duties and powers, municipalities act as agents of the state performing the state's governmental functions.); *City of Sandpoint v. Indep. Highway Dist.*, 161 Idaho 121, 125 (2016) (observing that government subdivisions, such as cities, may not disregard governmental duties assigned by the legislature.)

The United States Supreme Court also recognizes that cities are a part of the state.[4] *Louisiana v. City of New Orleans*, 109 U.S. 285, 287 (1883). ("Municipal

[3]See Idaho Code §§ 6-902(2); 7-1303(6); 18-5703(b); 20-801(3); 21-101(m); 22-4505; 33-133(1)(a); 39-3502(16); 39-5502; 39-7103; 39-8302; 40-117(6); 41-4102(9); 50-3102; 67-458; 67-2327; 67-6403(f); 67-8002(1); 67-8702; 73-401; and 74-202.

[4] At the hearing, the District Court suggested that Federal law considered cities as separate from the state governments. Tr. Vol 1, p. 12-13. To the extent that the District Court relied on this erroneous proposition in making its decision, it was in error.

corporations are instrumentalities of the state for the convenient administration of government within their limits."); *City of Trenton v. State of New Jersey*, 262 U.S. 182, 187 (1923) ("A municipality is merely a department of the state."); *Nixon v. Missouri Mun. League*, 541 U.S. 125, 140 (2004) (stating that municipal subdivisions are created to exercise "the governmental powers of the State" as is in the state's convenience and discretion).

As subdivisions of the State of Idaho, Idaho's cities exercise the State of Idaho's sovereign power as it is delegated by the Legislature. *See Caesar v. State*, 101 Idaho 158, 160 (1980). An example consistent with Idaho's doctrine of cities exercising delegated government authority appears in *Bisbee v. Cochise County* from the Arizona Supreme Court. 78 P.2d 982 (Ariz. 1938). This delegation of sovereignty led the Arizona Supreme Court to correctly determine that the general term "state" included all parts of the state government, including subdivisions of the state. *Id.* at 986–89. The Arizona Supreme Court held that when a subdivision exercises its limited, delegated sovereignty, it is also an exercise of the universal sovereignty of the state. *Id.* at 986–87.

A subdivision of a state is not a separate entity from a state, but the state itself. *See id.* The District Court wrongly ignored the fundamental connection between the State of Idaho and its many governmental appendages or expressions. Due to fact that a city's governing authority only emanates from Idaho's

sovereignty, the plain meaning of the general term "state" includes all parts of the State of Idaho's government, including all of its governmental subdivisions (*e.g.* cities).

4. The Legislature was aware of this Court's decisions when it used the very language interpreted by this Court to amend § 5-216 to create the governmental exemption to the five (5) year statute of limitation.

"It is to be presumed that the legislature in enactment of a statute consulted earlier statutes on the same subject matter." *State v. Long,* 91 Idaho 436, 441 (1967). Idaho courts recognize that some terms and phrases have developed specific meanings or subtexts resulting from consistent judicial interpretation. *St. Luke's Reg'l Med. Ctr., Ltd. v. Bd. of Comm'rs of Ada Cty.*, 146 Idaho 753, 758 (2009). For this reason, when the Legislature amends a statute, courts are to assume that the Legislature has a full knowledge of existing judicial interpretation. *Id.*

When the Idaho Legislature amended § 5-216, it intended all of Idaho's subdivisions to be exempt from the five (5) year limitation. The Legislature's manifested this intention by using virtually identical terms and phrases that had previously been given specific meanings in *Bannock County v. Bell*. When originally adopted in 1881, § 5-216 did not include the exemption at issue in this case. *See State v. Peterson*, 61 Idaho 50, 97 P.2d 603, 604 (1939). In 1939, the Idaho Legislature amended § 5-216 to include the following exception:

> The limitations prescribed by this section shall never apply to actions in the name or for the benefit of the state and shall never be asserted nor interposed as a defense to any action in the name or for the benefit of the state although such limitations may have become fully operative as a defense prior to the adoption of this amendment.

(emphasis added).

This Court should apply the well-established principles of statutory construction to infer that the Legislature was aware of this Court's prior interpretations of § 5-225 in *Bannock County v. Bell* and *Blaine County v. Butte County* when the Legislature amended § 5-216's limitation. By using virtually identical language as § 5-225, the Legislature was evincing its intent to exempt not only the state of Idaho from the five (5) year statute of limitations, but also all of Idaho's political subdivisions. Because the Legislature was aware that this Court had interpreted the general term "state" to include Idaho's governmental subdivisions, the Legislature could have used a more specific term to prohibit Idaho's governmental subdivisions from using § 5-216's exemption, but it did not. The Legislature, for example, used a more specific term it adopted § 5-247. Section 5-247 limits the initiation of government lawsuits against firearm manufacturers to only the Attorney General's Office. Idaho's many governmental subdivisions and agencies are specifically prohibited from initiating lawsuits against firearm manufactures. In § 5-216, the Idaho Legislature chose to use only the general term "state" and neither capitalized it, defined it, nor added "of Idaho" to specific the term.

Note that this Court has already defined the general term "state" to include all of Idaho's governmental entities. The Legislature understood that definition and usage of "state" when it amended § 5-216 using the general term, instead of a more specific term. This Court in this case should hold that this meaning of "state" has not changed and should reverse the District Court's order.

B. The District Court erred in determining that the contract was not for the benefit of the "state" because it ignored the public purpose of Idaho's government subdivisions and the language of the exemption to the statute of limitation.

Even if Idaho Code §5-216's reference to the general term "state" does not include Idaho's subdivisions, the City's contract with H-K is still exempt from the five (5) year limitation because the contract is "for the benefit of the state." Both the United States Supreme Court and this Court have stated that cities are created by the states to assist the states in performing the state's governmental duties as assigned by the legislature. *See e.g., Village of Lapwai*, 78 Idaho at 128–29; *City of Sandpoint*, 161 Idaho at 125; *City of Trenton*, 262 U.S. at 187. Even if the many subdivisions of the State of Idaho are not the "state" itself, as the City asserts they are, these subdivisions exist only to benefit the State of Idaho.

1. Idaho's cities benefit the State of Idaho by managing the public's property, interest, and funds, as directed by the Legislature.

The Idaho Legislature has broad power to enact laws to manage and promote the public's welfare and interests. *Van Orden v. State*, 102 Idaho 663, 637 (1981).

However, the Legislature cannot use its powers to promote primarily private interests. *Twin Falls Cnty. v. Idaho Health Facilities Auth.*, 96 Idaho 498, 502 (1974). For the State of Idaho's convenience, Idaho's Legislate has delegated some governmental authority to Idaho's cities to manage a portion of the public's property, interests, and funds. Idaho Code § 50-301; *see also Caesar*, 101 Idaho at 160. However, just because a city's management is typically focused on a localized geographic area of the State of Idaho, it does not convert the public's property, interests, and funds outside of the Legislature's control.

The public's property, interests, and funds managed by Idaho's cities are ultimately under the State of Idaho's control. Idaho is a Dillion's Rule state. *Caeser v. State*, 101, Idaho at 160. As such, Idaho's cities may not take any action that is not specifically authorized by the Idaho Constitution or the Legislature. *Id.* Even after an Idaho city disincorporates and ceases to exist, the public's property and interests are preserved. The Legislature has provided procedures to ensure that the public's property, interests, and funds remain part of the overall trust managed by the government for the benefit of its people. Idaho Code §§ 50-2207, 50-2211. These public assets simply transfer automatically to other Idaho governmental entities. *Id.* There is no "void" of governmental duty to preserve the public's property. The Legislature has full authority to modify these procedures and could reallocate the public's property to any other public purpose. *See Caesar*, 101 Idaho at 160.

By holding the public's property and interests (essentially in trust), Idaho's cities benefit the State of Idaho by promoting the government's public purpose. Idaho's cities are limited to executing their delegated governing powers for public purposes. *Twin Falls Cnty*, 96 Idaho at 502. "[N]o entity created by the state can engage in activities that do not have a primarily a public, rather than a private purpose." *Id.* Because Idaho's cities may only exercise legislatively delegated governing authority for public purposes, all of the City of Idaho Falls's contracts and actions benefit the State of Idaho in a definite, real sense.

The exemption from § 5-216's five (5) year statute of limitations is designed to preserve the public's property and interests. However, the District Court (apparently) erroneously determined that the City of Idaho Falls did not truly hold the public's property for the public benefit of the State of Idaho, but rather for a private benefit that extended only to the citizens of Idaho Falls. R Vol. 1, p. 76. In *City of Bisbee v. Cochise County*, the Arizona Supreme Court correctly dismissed a similar argument. 78 P.2d at 984–86. The Arizona Supreme Court observed that states create subdivisions for the sole purpose of delegating sovereign state power for the common benefit of the state's citizens. *Id.* As a result, the Arizona Supreme Court held that idea that state governmental entities operated only to serve private interests—as opposed to public interest—was "impossible to justify with any logical and consistent argument." *Id.* The same logic should be applied here.

Contracts created by an Idaho governmental subdivisions are limited to promoting public purposes. *See Twin Falls Cnty.*, 96 Idaho at 502. The District Court erroneously reasoned that, if § 5-216's exemption extended to local government contracts, then the exemption would allow all manner of private contracts to circumvent the five (5) year limitation simply because a litigant could "trace a benefit of its claim to some resident of the state." R Vol. 1, p. 76. That is incorrect. In fact, a litigant would need to show that the purpose of the contract would promote a public purpose and was not primarily designed to advance a private interest. The District Court's unwarranted concerns that a private individual could utilize § 5-216's exception ignores that Idaho's cities, as part of the Idaho government, are limited to promoting the public's interests (as directed and delegated by the Idaho Legislature).

2. The District Court's decision does not give effect to all the words in the statute because it renders the words "in the name" and "for the benefit of" superfluous and redundant by limiting the exemption to only to the State of Idaho.

In determining the ordinary meaning of a statute, effect must be given to all the words of the statute so that none of its provisions will be void, superfluous, or redundant. *Hillside Landscape Const., Inc. v. City of Lewiston*, 151 Idaho 749, 753 (2011). The District Court erred by interpreting that § 5-216's language "for the benefit of the state" referred only to actions brought by the State of Idaho. That

interpretation does not give distinct meaning to the two operational portions of § 5-216's exception: "in the name of" and "for the benefit of."

The language that is at issue in this case reads "[t]he limitations prescribed by this this section shall never apply to actions in the name or for the benefit of the state." Idaho Code § 5-216 (emphasis added). By holding that § 5-216's exemption only applies to the State of Idaho, the District Court's erroneous interpretation only gives effect to the language "in the name" and does not give effect to "for the benefit." Actions seeking to enforce the benefit of a governmental contract for the State of Idaho will naturally be brought in the name of the State of Idaho. Other governmental contracts, entered into by Idaho's many governmental subdivisions, also benefit the State of Idaho.

To give effect to § 5-216's language "for the benefit," the exemption must include litigation that is brought in the name of Idaho's subdivisions, but not the name of the State of Idaho itself, seeking to enforce the public's rights. The City requests that this Court hold that Idaho's governmental subdivisions, including cities, benefit the State of Idaho's public purpose. This Court should reverse the District Court's order because the City's contracts provide a direct benefit to the State of Idaho and, therefore, are not subject to the five (5) year limitation. Failure to do so nullifies the words "for the benefit" included in § 5-216 by the legislature.

C. The Statute of Limitations should not be applied because it violates the Idaho Constitution's prohibition on transferring public property and funds held in trust to a private interest.

When a statute of limitations would, in effect, transfer any amount of public interests or property to a private entity, the limitation does not apply because of the constitutional and trustee duties the government owes to the public. *Peterson*, 61 Idaho 50, 97 P.2d at 607. Idaho's statute of limitations may not be used "to allow that to be done by indirection which could not be done directly." *Id.* at 607.

In *State v. Peterson*, a couple received a loan, guaranteed by a mortgage on the couple's property, from the State's public school endowment fund. 61 Idaho 50, 97 P.2d at 603–04. Under the terms of the loan contract, the couple was required to make full repayment by certain date. *Id.* Although the parties mutually extended the maturity date, the couple ceased all payment, in breach of the loan agreement. *Id.* The State of Idaho did not bring its action until six (6) years after the couple's last payment. *Id.* In response to the State's foreclosure action, the couple asserted that Idaho Code § 5-216's five (5) year limitation to actions based on written agreements was applicable against the State (relying on § 5-225). *Id.* This Court observed that, if the couple were permitted to use the Statute of Limitations against the State of Idaho, then the public school endowment fund would essentially be converted from its public benefit to the couple's private use. *Id.* at 605-06. As such a

conversion would violate Idaho's Constitution, this Court held that the statute of limitation could not be applied against the government.[5] *Id.*

Similarly, by applying § 5-216 against the City, H-K was improperly permitted by the District Court to do something indirectly that H-K could not do directly—receive public funds and retain property owed to the public. In justifying its erroneous decision, the District Court found that H-K did not receive anything. R Vol. 1, p. 77. The District Court stated that "there is no evidence that the City transferred anything, public or otherwise, to H-K," then the District Court held that the public would not be injured by applying § 5-216. R Vol. 1, p. 77. In fact, the Agreement stated that the City of Idaho Falls transferred "one dollar ($1) and other good and valuable consideration" to H-K in consideration for H-K's promise to transfer the property at issue in this action. R Vol. 1, p. 13.

While it may seem absurd to dicker about a single dollar and the content of "other good and valuable consideration," this Court has instructed Idaho's courts to refrain from assessing the sufficiency of consideration in a contract. *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 526 (2011). A party asserting that

[5] Please note that at the time *State v. Peterson* was decided, § 5-216 did not include the exemption at issue in this case. Section 5-216 was amended by the Idaho Legislature in 1939, the same year as the Idaho Supreme Court's holding in *Peterson v. State*. As explained above, it should be inferred that the Idaho Legislature is aware of the Idaho Supreme Court's decisions. With the amendment to § 5-216, the Idaho Legislature exempted Idaho's governmental entities from the five (5) year limitation on written agreements.

consideration is either lacking or has failed to support a written agreement bears the burden of proving that fact. *Id.* However, H-K introduced no evidence at the hearing that the City did not perform its obligations. In essence, the District Court improperly "supplied" a fact not in evidence regarding the sufficiency and value of the consideration supporting the contract at issue. As a result, the District Court erred in finding that the City did not transfer anything to H-K.

The management of the public's funds and the public's property for public interests, rather than private, is a high constitutional duty of Idaho's governmental subdivisions. It is for this reason that the government of Idaho (and its component parts and subdivision) is constitutionally limited to executing governing powers only for public purposes. *See Twin Falls Cnty.*, 96 Idaho at 502. The City is required to manage a portion of the public's money and property for the benefit of the public, as directed by the Legislature and Idaho's Constitution. *See* Idaho Constitution Art. VIII § 2; Idaho Code §§ 50-1001 through 50-1049. Public property, interests, and funds must be preserved from the application of any statute of limitations that would have the effect of transferring what rightfully belongs to the public to a purely private individual. *Peterson*, 97 P.2d at 607.

By applying § 5-216's statute of limitation against the City, public funds were directly transferred from the City to H-K, a private corporation. In addition to the money, and the other "good and valuable consideration" which H-K apparently

agreed was sufficient to bind its promise when it entered into the contract with the City, the public was also deprived of H-K's promise to transfer real property. The District Court erred in holding that the transfer of public funds and "other good and valuable consideration," regardless of its value, to H-K was not sufficient enough to injure the public and suspend the limitation. The City respectfully requests that this Court reverse the District Court's unconstitutional application of the statute of limitations.

D. Public policy requires suspending the five (5) year limitation on written contracts to preserve the public's property and interests.

This appeal also requires an examination by this Court of the policy reasons behind exempting a governmental entity from a statute of limitation. Statutes of limitation were created to avoid fraudulent claims made by litigants many years after a cause of action arose. *Johnson v. Pischke*, 108 Idaho 397, 25 (1985) (policy of statute of limitation is to protect defendants from stale claims); *see also City of Bisbee*, 78 P.2d at 984–86. Dishonest claims were buttressed by the lapse of time because evidence to support a defense disappeared in the intervening years before the lawsuit. *City of Bisbee*, 78 P.2d at 985. However, at the common law, the government was exempt from statute of limitations because courts presumed that the government would not bring a lawsuit against its own citizens simply to harass or to purposefully wait for a citizen's defensive evidence to disappear. *Id.* at 8–9. Instead the government would only pursue actions designed to promote the general

welfare of the public. *Id.* Government claims were seen as different from private claims because the officers of the government cannot personally profit by enforce the public's rights. *Id.* Idaho's governmental exemption from § 5-216 is based on the same public policy grounds as the common law exemption.

Applying § 5-216 against the City in this case would permit H-K to breach a contract simply because it chose to quietly avoid its obligations to the public. "A court will not permit a party to avoid its contractual obligations." *Smith v. Idaho State University Federal Credit Union*, 114 Idaho 680, 684 (1988). There is a principle of justice, observed by this Court, that when performance is left to the determination of one party alone, then that party must act in good faith. *See Cheney v. Jemmett*, 107 Idaho 829, 832 (1984). Under the terms of the agreement, H-K had sole discretion to perform. There is no evidence in the record that the unnamed City official had authority to alter a contract entered into by the City Council[6]. By applying § 5-216 against the City, the District Court erred by allowing H-K to receive public funds and other "good and valuable consideration" and then avoid its contractual obligations to the public.

As a result of the District Court's decision, the City, and all other Idaho governmental subdivisions, will necessarily need to become much more aggressive,

[6] City officials have only the authority conferred by statute or by the city councils. *Moore v. Hupp*, 17 Idaho 232, 105 P. 209, 211 (1909). In the absence of granted authority by the council, only a city council can execute or modify an Idaho city's contracts. *Id.*

assertive, and perhaps litigious to protect the public's rights. If this Court upholds the District Court's decision, it would be unwise for any of Idaho's governmental entities (except those who might be able to sue directly in the State's name) to assume that others will act in good faith. Each will likely consider litigation to preserve the public's rights the day after the first sign of a failure to perform.

If § 5-216 applies in this case, then the Idaho governmental subdivions who cannot sue in the name of the State of Idaho will have an additional burden in promoting the public's interests that governmental subdivisions who can sue in the name of the State of Idaho. This inconsistent approach will waste the public's resources. Many of Idaho's governmental subdivisions must manage the public's interests and property with few resources. The City, like many of Idaho's governmental subdivisions, manages multiple properties and it enters into hundreds of contracts annually. The application of § 5-216's five (5) year limitation would require a great change in how Idaho's governmental entities "do business." To preserve the public's funds and promote consistency between Idaho's governmental entities, public policy requires that § 5-216's limitation should not be applied against the City.

In addition, this Court would be inviting additional litigation to determine which of Idaho's governmental entities are part of the "state" or which of Idaho

governmental entities can sue in the name of the State of Idaho.[7] Allowing parties to willfully breach to see if a public agency notices in time and encouraging public agencies to litigate suspected breaches does not further a sound public policy for the State's subdivisions nor does it promote the preservation of the public's property, interests, or funds. As a result, the City requests that this Court reverse the District Court's order to dismiss as the District Court's application of § 5-216 violates public policy.

VII. CONCLUSION

The District Court erred in holding that the general term "state" referred only to the State of Idaho and not to its subdivisions that exercise the State of Idaho's delegated governmental authority (including the City of Idaho Falls). The City of Idaho Falls respectfully requests that this Court reverse the District Court's order, hold that § 5-216's exemption applies to all of Idaho's governmental subdivisions, and remand this case for additional proceedings.

Dated this 28 day of August, 2017.

Michael Kirkham
Attorney for Appellant

[7] For example, the City of Idaho Falls employs prosecutors who initiate prosecutions to enforce the Idaho Code. All of these actions are brought in the name of "the State of Idaho."

Certificate of Mailing

I hereby certify that two copied of the foregoing document were mailed, postage pre-paid, to the following:

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Dated this 28 day of August, 2017.