6-20-2018

Aspen Park, Inc. v. Bonneville County Amicus Brief Dckt. 45679

Electronically Filed
6/20/2018 10:21 AM
Idaho Supreme Court
Karel Lehrman, Clerk of the Court
By: Brad Thies, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF IDAHO

ASPEN PARK, INC., Plaintiff/Appellant vs. BONNEVILLE COUNTY, Defendant/Respondent.	)	**Supreme Court No. 45679-2018**

BRIEF OF AMICUS CURIAE
IDAHO ASSOCIATIONS OF COUNTIES, INC.

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, Presiding

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I.

INTRODUCTION

This amicus brief is brought by the Idaho Association of Counties (IAC) so that granting by counties of tax exemptions for low income housing owned by a non-profit organization may be thoroughly addressed on a state-wide basis. Exemption from taxation on the local level takes revenue from local government and must always be narrowly construed. Unless an entity can meet all requirements to qualify for a tax exemption, the entity's property must be taxed, regardless of the entity's dedication to a laudatory ideal.

In this case, an Internal Revenue Code § 501(c)(3) corporation owns and manages a housing complex. It seeks to qualify for a tax exemption under Idaho Code § 63-602GG. However, the Appellant forthrightly concedes that not all the housing unit occupants meet the reduced median income levels required by the statute. Appellant argues the district court and the tax court, both of whom rejected Appellant's tax exemption request, committed error by finding the corporation's philosophical commitment to be insufficient to warrant the granting of a tax exemption.

Black's Law Dictionary, 6th Ed., defines "dedicate" as meaning "to appropriate and set aside one's private property for public use." Meriam Webster has numerous definitions which include both "devoted to a cause, ideal or purpose", and "to set apart to a definite use".

IAC believes the plain, ordinary and usual meaning of this statute requires that an entity seeking tax exemption under this statute must devote one hundred (100%) of the occupied housing units for individuals who earn no more than sixty percent (60%) of the county median income. Failure to meet this criterion prevents an entity from qualifying for tax exemption under this statute.

Even if this Court determines this statute is ambiguous, legislative intent reveals that the sponsor sought to establish a uniform approach for granting tax exempt status that required strict qualification in terms of ownership, management and utilization. Tangible actions, not professed intangible aims, are the criteria for government to forgo tax revenue.

Appellant seeks to be granted tax exempt status without meeting all of the requirements of Idaho Code § 63-602GG. This Court should determine that objective, concrete compliance with the statutory requirements, rather than laudable ideals, are necessary to receive tax exemption status. The legislature is the appropriate forum to modify the statute, not the court system.

II.

STANDARD OF REVIEW

"Where the district court conducts a trial de novo in an appeal of a Board of Tax Appeals decision, this Court defers to the district court's findings of fact that are supported by substantial evidence, but exercises free review over the district court's conclusions of law." *Canyon Cnty. Bd. of Equalization v. Amalgamated Sugar Co.,* 143 Idaho 58, 60, 137 P.3d 445, 447 (2006). The interpretation of a statute is a question of law subject to free review. *Callies v. O'Neal,* 147 Idaho 841, 847, 216 P.3d 130, 136 (2009).

III.

ARGUMENT

A. Idaho Code § 63-602GG clearly requires one hundred percent (100%) of the property's units be dedicated for individuals who earn sixty percent (60%) or less of the county's median income for the operating non-profit organization to receive exemption from taxation on the housing property.

In 2002, the Idaho Legislature enacted Idaho Code § 63-602GG, providing for exemption from taxation on low income housing property owned by a nonprofit organization. Idaho Code § 63-602GG(2) requires that the property be owned by a qualified nonprofit organization. Regardless of the merit in providing low income housing for citizens, only qualified nonprofits have the potential to take advantage of this statutory provision. For-profit businesses that own and operate housing property offering low income housing are not able to take advantage of this statute.

In addition to the requirement that a nonprofit entity owns the property seeking tax exempt status, the property must either be managed by the nonprofit or managed by a related qualified nonprofit Idaho Code § 63-602GG(3)(a). This is another clear and distinct limitation which must be met by any potential entity seeking tax exemption for low income housing property.

In addition to ownership and management requirements, the utilization requirement of the property is clearly detailed – "all housing units in the low-income housing are dedicated to low-income housing in the following manner: [55% for individuals earning less than 60% of county median income; 20% for individuals earning less than 50% of county median income; and 25% for individuals earning less than 30% of county median income]". Idaho Code § 63-602GG(3)(c).

Appellant concedes that 13 of the 72 housing units on the property for which it seeks tax exemption are occupied by individuals who exceed the county median income limitation set forth in the statute.

Appellant appears to argue that it is committed to the ideal of providing low income housing as set forth in the statute, but rents to higher income families when no applicant will fulfill the requirements contained in the statute at the time of vacancy. Because the nonprofit is committed to this ideal, the argument suggests, it has met the "dedicated" requirement if the word is defined as "devoted to a cause, ideal or purpose." "Dedicated" as previously noted, also means to set apart to a definite use. Based upon the guidance given by this Court and the legislature, it is clear that the definition of "dedicated" in this statute means "to set apart to a definite use" as opposed to a commitment to an ideal.

To begin the analysis, Idaho Code § 63-602GG does not use "dedicated" to describe the nature of the nonprofit entity (as in devoted to an ideal). Rather, the word is used to differentiate the rental units within the property – "All the housing units … are dedicated … in the following manner … ." Hence, a plain reading of the pertinent sentence demonstrates that the legislature intended certain units to be set apart from others. No construction is necessary as no other interpretation is possible. The language of exemption statutes must be given its ordinary meaning and an exemption will not be sustained unless within the spirit, as well as the letter, of the law. *Evangelical Lutheran Good Sam. Soc. v. Board of Equalization of Latah County*, 119 Idaho 126, 129, 804 P.2d 299, 302 (1991). Put another way, there is no way to argue that the meaning of the statute is doubtful or obscure so that reasonable minds might be uncertain or disagree as to its meaning. See, *Doe v. Doe*, 158 Idaho 614, 349 P.3d 1205 (2015).

If however there must be interpretation, Idaho Code § 73-113 is the starting place. This section provides:

> 73-113. CONSTRUCTION OF WORDS AND PHRASES. (1) The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall

> be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.
> (2) If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored.
> (3) Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

Idaho Code § 73-113.

What did the legislature intend when it required that "all housing units in the low-income housing are dedicated to low-income housing in the following manner …"?

There are two ways to view the word "dedicated" in the context of this case, either one of which favors the position taken by Bonneville County. The first way to define the word is the plain and ordinary meaning test set forth in section (1) of the statute. The word must be defined by its context. Since statutes are by definition designed to be followed literally, the only possible way of viewing the word (used to modify the term "housing units") is to interpret it as "setting aside for a particular purpose."

Only by fulfilling the statutory terms may tax exemption be achieved. After all, what is the statute for if not to set forth the explicit rules by which one may claim tax exempt status? It was certainly not enacted to put forth flexible goals to be honored only in the breach or under ideal conditions.

The other way to view the word "dedicated" is to treat it as a term of art under subsection (3) of the statute. Viewed through this lens, the word has special meaning in the context of property. Usually used in the context of dedication of public common areas, the word has been defined by this court as "the setting aside of real property for the use or ownership of others."

Armand v. Opportunity Management Co., Inc., 141 Idaho 709, 714, 117 P.3d 123, 128 (2005), citing *Sun Valley Land and Minerals, Inc. v. Hawkes*, 138 Idaho 543, 548, 66 P.3d 798, 803 (2003). See also *Ponderosa Home Site Lot Owners v. Garfield Bay Resort, Inc*., 139 Idaho 699, 85 P.3d 675 (2004) and *Rowley v. Ada County Highway Dist*., 156 Idaho 275, 322 P.3d 1008 (2014).

Under the common law, dedication is irreversible, regardless of convenience, or even necessity. The following quotation is used so often by courts it has become a virtual legal maxim:

> If a dedication is made for a specific or defined purpose, neither the legislature, a municipality, or its successor, nor the general public has any power to use the property for any other purpose than the one designated, whether such use be public or private, and whether the dedication is a common-law or a statutory dedication, and this rule is not affected by the fact that the changed use may be advantageous to the public.

Miller v. City of Columbia, 136 S.E. 484 (S.C. 1927); *City of Fort Worth v. Burnett*, 114 S.W.2d 220 (Tx. 1938); *Gallagher v. City of Omaha*, 204 N.W.2d 157 (Neb. 1973); *Houston Power and Light Company v. State of Texas*, 925 S.W.2d 312 (Tx. 1996).

Recognizing that the Idaho legislature's use of the word "dedicated" is set out in a somewhat different context than cases dealing with the law of property, the point is that a dedication leaves no room for flexible use dependent upon temporary conditions, needs or desires. Certainly, it is never used in the sense argued by the Appellant.

In short, no matter whether the word "dedicated" is to be defined in its context within the tax statute or as a term of art, there is no room to argue ambiguity. This Court has repeatedly stated that where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect. *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 894, 265 P.3d 502, 507 (2011) citing *Worley Highway Dist. v. Kootenai County*, 98 Idaho 925, 576 P.2d 206 (1978); and *Moon*

v. Investment Board, 97 Idaho 595, 548 P.2d 861 (1976); *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964).

Verska is particularly instructive, considering Appellant's argument that strict adherence to the statute as written would result in Appellant having to leave some apartments vacant for some unknown period until they could be let to appropriate low income renters, and that this would result in a hardship on the public, or would be otherwise socially unsound. In *Verska*, this court, having had its fill of claims that statutes could not mean what they say, issued what can only be described as a broadside. The court set the stage by citing unremarkable prior holdings:

> "If the statute as written is socially or otherwise unsound, the power to correct it is legislative, not judicial." *In re Estate of Miller*, 143 Idaho 565, 567, 149 P.3d 840, 842 (2006). The interpretation of a statute "must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (citations omitted). "We have consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961, 963 (1993).

151 Idaho at 893.

Then, abrogating its own precedent, the *Verska* court unanimously and unequivocally stated that:

> Thus, we have never revised or voided an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so. "The public policy of legislative enactments cannot be questioned by the courts and avoided simply because the courts might not agree with the public policy so announced." *State v. Village of Garden City*, 74 Idaho 513, 525, 265 P.2d 328, 334 (1953). Indeed, the contention that we could revise an unambiguous statute because we believed it was absurd or would produce absurd results is itself illogical. "A statute is ambiguous where the language is capable of more than one reasonable construction." *Porter v. Board of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004). An unambiguous statute would have only one reasonable interpretation. An

> alternative interpretation that is unreasonable would not make it ambiguous. *In re Application for Permit No. 36–7200,* 121 Idaho 819, 823–24, 828 P.2d 848, 852–53 (1992). If the only reasonable interpretation were determined to have an absurd result, what other interpretation would be adopted? It would have to be an unreasonable one.

151 Idaho at 896. Thus, a statute's words must be adhered to, no matter how many examples of hardship, absurdity, unfairness, or unreasonableness can be described. Simply put, if a non-profit entity cannot make the statute work to fit its own circumstances, it should approach the legislature, and not ask the courts to interpret the statute to grant tax exemption where it clearly does not apply.

IAC takes no issue with Appellant's claim that its ideal is to offer low income housing. Nor does IAC dispute that Appellant's ideal would be to fill its housing units with individuals who meet the criteria set out in Idaho Code § 63-602GG. However, Appellant is arguing the intangible ideal is sufficient to justify exemption from taxes. IAC disagrees. As noted in *Ada Cty. Assessor v. Roman Catholic Diocese of Boise,* 123 Idaho 425, 428, 849 P.2d 98, 101 (1993):

> Idaho case law requires that all tax exemption statutes be strictly and narrowly construed against the taxpayer, who must show a clear entitlement, and in favor of the state. Courts may not presume exemptions, nor may they extend an exemption by judicial construction where not specifically authorized. *Bistline v. Bassett,* 47 Idaho 66, 71, 272 P. 696, 701 (1928). *See also Bogus Basin Recreational Assoc., Inc. v. Boise County Bd. of Equalization,* 118 Idaho 686, 799 P.2d 974 (1990); *Canyon County Assessor v. Sunny Ridge Manor, Inc.,* 106 Idaho 98, 675 P.2d 813 (1984).

Ada Cty. Assessor v. Roman Catholic Diocese of Boise, 123 Idaho at 428, 849 P.2d at 101.

Prior to the *Roman Catholic Diocese* decision, the Idaho Supreme Court declared that "[t]ax exemptions exist as a matter of legislative grace, epitomizing the antithesis of traditional democratic notions of fairness, equality, and uniformity. *Canyon County Assessor v. Sunny Ridge Manor,* 106 Idaho 98, 102, 675 P.2d 813, 817 (1984). Tellingly, the court also stated: "[A]s this court stated in *Bistline v. Bassett*, 47 Idaho 66, 272 P. 696 (1928), '[t]o ascertain whether the

property of a corporation falls within an exemption statute ... [the corporation] must not only be judged by its declared objects, but also by what use is actually made of [it].' " 106 Idaho at 101 (emphasis added). Hence it would seem by definition that a corporation's property that is not used in compliance with the statute cannot be tax exempt, no matter what its goals might be.

This Court should determine that Idaho Code § 63-602GG is clear and unambiguous. All criteria set forth in the statute must be met or the statute will not apply.

The district court did not err when it decided that Appellant was not entitled to receive the benefit provided by Idaho Code § 63-602GG.

B. The legislative history demonstrates that the statute required strict compliance in order for an entity to qualify to receive a tax exemption.

IAC firmly believes that the statute is not ambiguous. In such a case, resorting to legislative history for the purpose of altering the clearly expressed intent of the legislature is not appropriate. *Statewide Const., Inc., v. Pietri*, 150 Idaho 423, 247 P.3d 650 (2011). However, seeking edification from the legislative history is not unreasonable when ascertaining legislative intent in the interest of clarity. *Webb v. Webb*, 143 Idaho 521, 148 P.3d 1267 (2006).

The legislative history is attached as Exhibit A to this brief. In 2002 when Idaho Code § 63-602GG was House Bill 652, the Senator sponsor attended the March 6, 2002, committee meeting of the House Revenue and Taxation Committee. He presented the bill as providing for property exempt status for low income housing with "strict qualifications" for the organization and the property. The bill was designed to clear up inconsistent application of tax policy. In the Senate, the sponsor demonstrated that the bill had been vetted by non-profit organizations and that the agreed upon language was the result of a year of effort, and that the intention was to close loopholes.

Hence, the legislative history shows that the requirements in the statute allowing for tax exemption were not set forth as some ideal to be reached when all factors might come together, with the exemption continuing upon the hope that the requirements might be complied with upon some unknown date in the future. Rather, the requirements were presented as strict so that application would be uniform statewide.

IAC believes that the legislature required tangible proof that the requirements would be met before a tax exemption would be granted. Intangible ideals are not sufficient to confer tangible and significant benefits in the form of a tax exemption.

IV.

CONCLUSION

IAC recognizes the importance of offering low income housing throughout the state and especially in areas where costs are outpacing wage growth. Nothing in this amicus brief should be viewed in any way as disparaging Appellant and other non-profit organizations who work to improve the lives of Idahoans every day.

The issue before this Court is whether Appellant met all criteria contained in Idaho Code § 63-602GG to receive a tax exemption. IAC believes that the statute has strict requirements that Appellant did not meet. The word "dedicated" in the statute means that all occupied housing units (other than the manager's unit) are set aside for individuals who make not more than 60% of the county median income. Because the housing units owned and managed by Appellant had individuals residing in the housing units who did not meet the criteria, Appellant is not eligible to receive the benefits of this provision.

The district court did not err when it determined the Appellant did not meet the criteria. This Court should affirm the decision.

DATED this 20th day of June, 2018.

MICHAEL KANE & ASSOCIATES, PLLC

BY: /s/ Michael J. Kane
Attorneys for IAC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of June, 2018, I caused to be served a true and correct copy of the foregoing document by the method indicated below and addressed to the following:

Attorney for Aspen Park: Mr. C. Timothy Hopkins Mr. Sean J. Coletti Hopkins, Roden, Crockett, Hansen & Hoopes, PLLC 428 Park Avenue Idaho Falls, ID 83402 [Emails: timhopkins@hopkinsroden.com and seancoletti@hopkinsroden.com]	__XX___ U.S. Mail __XX___ Email _____ iCourt eFile/eServe
Attorney for Bonneville County: Mr. Weston Davis Nelson, Hall, Parry, Tucker, PA 490 Memorial Drive Idaho Falls, ID 83402 [Email: wdavis@nhptlaw.net]	__XX___ U.S. Mail __XX___ Email _____ iCourt eFile/eServe

/s/ Michael J. Kane

MINUTES

HOUSE REVENUE AND TAXATION COMMITTEE

DATE: March 6, 2002

TIME: 9:00 a.m.

PLACE: Room 404

MEMBERS: Chairman Crow, Vice Chairman Kellogg, Representatives Gould, Barrett, Bruneel, Ridinger, Mader, Moyle, Field(13), Wood, Schaefer, Smith(23), Wheeler, Collins, Ellis, Raybould, Roberts, Henbest, Cuddy

ABSENT/ EXCUSED: Representative Wood

GUESTS: Senator Stegner; Mary Chant, Idaho Committee Action Association; Barbara Leachman, Lewiston Committee Action; Karen Kirkwod, Lewiston, ID; Jan Wall, Idaho State Library

Chairman Crow called the meeting to order and requested a silent roll call. Representative Field moved to accept the minutes of the meeting held on March 5, 2002 as written. The Chairman informed the members that the sponsor of HB 689 had requested the bill be held in Committee and asked for unanimous consent to hold.

HB 689: Unanimous consent was given to **Hold HB 689.**

HB 652: **Senator Stegner** testified that this legislation will clarify the property tax exempt status of very low-income rental property when owned and operated by charitable non-profit organizations that meet strict qualifications of ownership, management and utilization. Currently, counties throughout the State of Idaho are treating these kinds of low-income property inconsistently. Similar housing units are being taxed in some counties and not in others. This inconsistent application of tax policy creates inequality. This bill creates strict qualifications for both the organization and the property to ensure a uniform application of the exempting across the state. He provided the members with reports depicting units currently paying taxes that would be tax-exempt under this legislation. (Attachment #1) A list of non-profit housing currently considered exempt. There are three units on the list that need to be removed (shaded areas on report) changing the fiscal impact from $191,978 to $107,892.

Mary Chant, Idaho Committee Action Association, testified in support of HB 652 saying there had been a lot of work done by counties and the Idaho Association of Counties to find a solution to the inconsistency of the exemption. She reiterated Senator Stegner's testimony that charitable non-profit low-income housing projects are being taxed in some counties and not in others. The exemption has been disallowed when there has been no change in ownership or operation. This makes it difficult for non-profit low-income housing operations to budget and they cannot offset by raising rents.

Exhibit A

Barbara Leachman, Housing Director, Lewiston Committee Action, testified in favor of HB 652 saying it will not be easy to qualify under the new qualification language, yet it should help solve the problems of both the commissioners and the charitable low-income housing providers. Low-income housing is serving a public need.

Karen Kirkwood, Lewiston, Idaho, spoke in support of HB 652 saying she and her children live in a low-income home. She said the Committee Action Association has assisted in placing them in a safe place she can afford.

MOTION: Representative Bruneel moved to send **HB 652,** with a corrected fiscal impact, to the floor with a **do pass recommendation.** Motion passed on a voice vote. Representatives Bruneel and Duncan will co-sponsor the bill on the floor.

HB 684: The Chairman announced the next item on the agenda was HB 684. The legislation will increase the availability of venture capital in the State of Idaho by $30 million. Representative Mader provided copies of three reports on the potential economic impact of venture capital. (Attachments 2, 3 and 4)

MOTION: It was moved by Representative Gould to send **HB 684** to the floor with a **do pass** recommendation. Roll call was requested.

ROLL CALL VOTE: Voting Aye - Representatives Crow, Duncan, Gould, Bruneel, Mader, Field, Smith, Wheeler, Collins, Ellis, Raybould, Roberts, Henbest, Cuddy. Voting Nay - Representatives Barrett, Ridinger, Moyle, Schaefer. Motion **passed, 14-4-1.** Representative Mader floor sponsor.

HB 685: Chairman Crow announced the next item on the agenda was HB 685 and recognized **Representative Barrett** to present the bill. She stated the purpose of this Act is to allow State Land Board designated mine operators an alternative form of reclamation bond. The alternative bond will be provided in the form of annual payments to a dedicated reclamation account. The reclamation account will reduce the economic impact of reclamation bonding on small mining operations, streamline the process for providing reclamation assurance and maintain adequate financial guarantee for mine reclamation. She submitted an amendment to clarify the procedure for implementation.

MOTION: Representative Moyle moved to send **HB 685 to general orders with committee amendment attached** to clarify the procedure for implementation. Motion carried on voice vote. Representative Barrett will sponsor the bill on the floor.

HB 688: The Chairman announced the next item on the agenda was HB 688 and recognized John Watts, sponsor of the bill. **Mr. Watts** yielded to **Jan Wall**. She stated she was representing the **Idaho State Library** and testified that this bill establishes a capital assets replacement and repair fund for library districts. The legislation provides for a number of safeguards to restrict use of these funds and requires audits and reports at a public hearing.

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE:	March 11, 2002
TIME:	3:00 p.m.
PLACE:	Room 426
MEMBERS:	Chairman Thorne, Vice Chairman Wheeler, Senators Hawkins, Frasure, Ipsen, Bunderson, Branch, Stegner, Marley, Bartlett substituting for Branch
ABSENT/ EXCUSED:	None

Chairman Thorne called the meeting to order at 3:02 p.m. A silent roll call was taken. Senator Marley moved the minutes of March 8, 2002 be approved as written. Senator Wheeler seconded the motion. By unanimous voice vote the minutes were approved.

H 684

Representative Mader presented House Bill 684 to the committee. Up until this date, we have not had a lot of venture capital investment in the State of Idaho. The United States as a whole has enjoyed more development because of the ability for venture capital investment. The idea companies do not have the capital to start up. Venture capital is usually consumed in the building of the company. The investors are part of the ownership of the company, and provide managerial support to the company. Currently businesses seeking venture capital from out of state are being told they will have to move to the area out of state where the money is coming from. When returns come in, the profits are disbursed to the designated investors. The first tax credits become available in the year 2010. There is a long term investment of at least five years and in most cases, a much longer period of time. Over time, the tax credits are reduced to zero and the venture capitalist owns the business. If the business fails the State stands to lose the funds guaranteed. In other states, there has been a successful rate of return on venture capital investments. The risk in this proposal is, in Mr. Mader's opinion, a prudent decision to make. If a company goes belly-up, the funds will come out of the General Fund. He said this will be a risk, but if the return is even close to rates of return around the country, we will be in very good condition to generate income for the State.

MOTION

Senator Bunderson moved to send House Bill 684 to the full Senate with a "do pass" recommendation. Senator Stegner seconded the motion.

ROLL CALL VOTE

By a roll call vote of 6-3 the "motion passed," with Senators Marley, Stegner, Bunderson, Ipsen, Wheeler, and Thorne voting aye; Senators Bartlett, Frasure, and Hawkins voting against the motion. Senator Bunderson will sponsor House Bill 684 to the full Senate.

H 688

John Watts, Veritas Advisor for the Library Associations, explained

House Bill 688 establishes a capital assets replacement and repair fund for library districts. Restrictions are outlined for the use of these funds and requires audits and reports at a public hearing. The proposal clarifies a two thirds majority is required to pass a bond, and restricts use of facilities reserve funds. Land or buildings cannot be purchased with these funds.

MOTION **Senator Wheeler** moved to send House Bill 688 to the full Senate with a "do pass" recommendation. Senator Bunderson seconded the motion.

VOTE By a unanimous voice vote the "motion passed." Senator Wheeler will sponsor House Bill 688 to the full Senate.

H 652 **Senator Stegner** presented House Bill 652 to the committee. The State of Idaho already has tax exempt status for benevolent purposes. Property of equal status in separate counties is taxed or tax exempt according to the persuasions of the various County Commissioners. He distributed a handout to demonstrate the fiscal impact. Included are lists of properties receiving exempt status, and a list of properties not enjoying a tax-free status. Ownership of the property is defined. No property management company can be involved.

Rod Beck stood in opposition to House Bill 652. He served as the Executive Director for Idaho Housing Association for three years. Some of these businesses do have problems qualifying for tax exemptions. He is positive this will open things up to a large number of questions of what the limitations are. They are not as limiting as they sound, according to his opinion. He proposed this action would be an unfunded mandate being handed down to the County Commissioners.

With the full Senate recessed and waiting for committee members, the meeting adjourned at 3:25 p.m. subject to the call of the Chair.

Senator J.L. "Jerry" Thorne
Chairman

Nancy King
Secretary

MINUTES

SENATE LOCAL GOVERNMENT AND TAXATION COMMITTEE

DATE: March 13, 2002

TIME: 3:00 pm

PLACE: Room 426

MEMBERS: Chairman Thorne, Vice Chairman Wheeler, Senators Hawkins, Frasure, Ipsen, Bunderson, Branch, Stegner, Marley, Bartlett substituting for Branch

ABSENT/ EXCUSED: None

Chairman Thorne called the meeting to order at 1:35 p.m. A silent roll call was taken.

H 652

Senator Stegner introduced **Terri Ottens**, Idaho Community Action Association director, to elaborate on the discussion presented in a previous meeting. They are a non profit organization serving low income families in all counties in the State. She and others have worked for over a year to come up with language that everyone could agree upon. This opens up only one-quarter of the population to low-income housing. Section 42 housing is clearly exempted and is not included with this legislation. They had contacted every county assessor and made many phone calls over the past 18 months to compile the list of existing low income housing projects. Idaho Housing and Finance Association properties are not on this list and they are already receiving Federal and State exemptions and will not create any additional tax burdens. She responded to questions as to whether or not there were any possible additional low-income housing projects in the state that could qualify, the answer was, not unless a sale had taken place in the last day or two.

Valencia Bilyeu, Ada County Prosecutor, and Attorney speaking in behalf of the Idaho Association of Counties. Last year she had contested a bill giving tax credits to low income housing. Senator Stegner had asked her to assist in drafting legislation to close up loopholes and to codify those that should legitimately receive the exemption. She referred to the bill to list the qualifications an organization must meet to be listed as a non-profit low-income housing corporation. See lines 13-28 on page one of the bill.

Bob Kite, Attorney for Idaho Housing and Finance Association, testified that they do not have any objections to House Bill 652. They have their own qualification of exemption outside of this legislation. In their review, this legislation will not extend and exemption to properties which are not non-profit.

Rod Beck addressed the committee and submitted an additional handout to demonstrate the numbers of median income in Ada County, and to

show the levels of income necessary to qualify under the limits stated in House Bill 652. His discussion centered on the prospective properties that may be created to gain the advantage under the principles of this legislation. The current application is not of concern to him. Nothing in this limits the amount of rent charged, nor are there provisions for ongoing verification on income levels to continue to qualify for the required income levels.

MOTION **Senator Stegner** moved to send House Bill 652 to the full Senate with a "do pass" recommendation. Senator Marley seconded the motion.

ROLL CALL VOTE By a roll call vote of 7-1-1 the "motion passed," with Senators Marley, Stegner, Bartlett, Bunderson, Ipsen, Wheeler, and Thorne voting aye; Senator Hawkins voting against the motion, and Senator Frasure absent for the vote. Senator Stegner will sponsor House Bill 652 to the full Senate.

H 724 **Russell Westerberg** presented House Bill 724 on behalf of Charles Lempesis. This legislation is meant to provide a uniform means of allowing all fire districts which were impacted by abnormally low levies prior to the enactment of §63-2220A Idaho Code to reach a district levy of .24% with the approval of the voters within the fire district. This amendment seeks to avoid penalizing fire districts which traditionally have been frugal from obtaining adequate funding as a result of the enactment of §63-2220A Idaho Code.

Chief Alcott, Idaho Fire Chiefs Association, testified in favor of House Bill 724. This legislation provides flexibility that is absolutely necessary for districts to maintain safety. The fire district commissioners keep a very conservative view on levy limits. The average levy is very low.

Randy Nelson, Idaho Taxpayers Association, distributed a handout listing the various levies in each of the fire districts throughout the State of Idaho. Many of those districts were held below the granted amount of .24% and this will allow them to catch up and be able to maintain their financial needs.

MOTION **Senator Bunderson** moved to send House Bill 724 to the full Senate with a "do pass" recommendation. Senator Stegner seconded the motion.

VOTE By a unanimous voice vote the "motion passed." Senator Bunderson will sponsor House Bill 724 to the full Senate.

Senator Wheeler moved the minutes of March 11, 2002 be approved as written. Senator Marley seconded the motion. By a unanimous voice vote the motion passed.

With no further business before the committee, the Chair adjourned the committee sine die at 2:30 p.m.

J. L. Thorne

Senator J.L. "Jerry" Thorne
Chairman

Nancy P. King

Nancy King
Secretary