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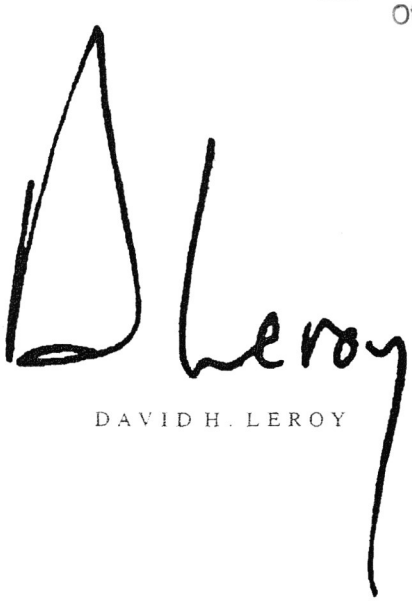


DAVID H. LEROY ATTORNEY AT LAW

David Meyer, General Counsel
Avista Corporation
P.O. Box 3727
Spokane, WA 99220-3727

October 16, 2010

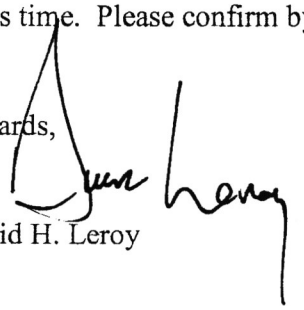
ENGAGEMENT LETTER

Dear David:

This letter will confirm that Avista Corporation has engaged this Office to provide an independent legal opinion as to whether the provisions of Idaho Code Section 61-327 apply to, prevent or permit the transaction pending before the Idaho Public Utilities Commission upon the Joint Application For an Order Authorizing Proposed Transaction filed September 24, 2018 in Cases Numbered AVU-E-17 and AVU-G-17-05. Drawing upon my background of 47 years as a public and private lawyer in this jurisdiction, I will consult all relevant sources, including but not limited to PUC filings, transcripts and orders, statutory language, legislative history and case authorities, as well as negative and positive public commentary to timely render a written opinion in the standard format used by this office for such questions.

For this service, I will bill at the rate of $400 per hour, with paralegal services at $150 per hour. I will not request an advance retainer at this time. Please confirm by a signed, returned copy of this letter, that these terms are agreeable.

Regards,



David H. Leroy

_____

Agreed, Avista Corporation, by

_____

Emphasizing Criminal Defense, Divorce, Trials and Government Law
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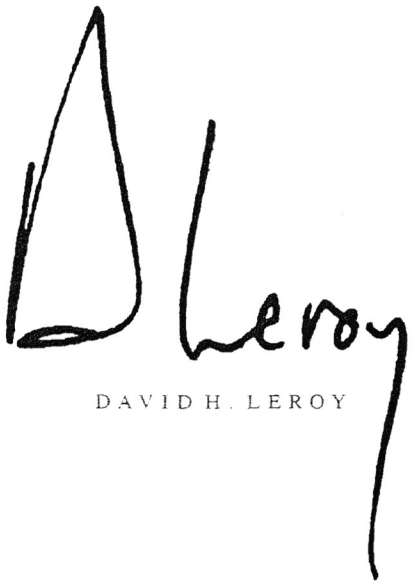

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David H. Leroy

Agreed, Avista Corporation, by

Exhibit No. 15
Case Nos. AVU-E-17-09/AVU-G-17-05
D. Leroy, Leroy Law
Schedule 1, Page 1 of 1

DAVID H. LEROY ATTORNEY AT LAW

LEGAL OPINION OF DAVID H. LEROY

TO: DAVID MEYER, CHIEF COUNSEL FOR REGULATORY AND GOVERNMENTAL AFFAIRS, AVISTA CORPORATION, SPOKANE, WASHINGTON

FROM: DAVID H. LEROY, ATTORNEY AT LAW, BOISE, IDAHO

DOCUMENT: LEGAL OPINION REGARDING THE APPLICATION AND INTERPRETATION OF IDAHO LAW

DATE: OCTOBER 26, 2018

QUESTION PRESENTED:

Do the provisions of Idaho Code Section 61-327 respecting the prevention of the transfer of electric power facilities to any out of state government or municipal corporation or subdivision thereof require the Idaho Public Utilities Commission to deny the Application of Hydro One Limited and Avista Corporation proposing the sale of Avista to Hydro One, a Canadian investor owned, publicly traded corporation, through a wholly owned subsidary, Olympus Equity, LLC, a Delaware corporation, as Avista continues to be a Washington state corporation under the jurisdiction and regulatory control of the Idaho Public Utilities Commission?

ANSWER:

No. The provisions of Idaho Code Section 61-327 do not apply to the proposed transaction. The words of the statute refer to states of the United States and do not prevent minority shareholding by a Canadian Province of a parent company of the Avista utility. The legislative history of the statute also demonstrates that the entities which were intended to be prohibited from owning Idaho electric power facilities were municipal public utility districts based in neighboring states, such as Washington. Because neither Hydro One nor Olympus Equity, LLC not Avista is such an entity, nor a government entity at all, the transaction complies with the requirements for approval.

AUTHORITIES AND MATERIALS CONSULTED:

Exhibit No. 15
Case Nos. AVU-E-17-09/AVU-G-17-05
D. Leroy, Leroy Law
Schedule 2, Page 1 of 16

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A. ADMINISTRATIVE SOURCES

1. The Joint Application For an Order Authorizing Proposed Transaction in Case Number AVU-E-17-09, AVU-G-17-05 with 9 Appendices thereto, September 24, 2018

2. The Supplemental Testimony of K. Collins Sprague for Avista Corporation before the Idaho Public Utilities Commission, September 24, 2018

3. Transcript of Public Hearing before the Idaho PUC, Sandpoint, Idaho June 13, 2018

4. Transcript of Public Hearing before the Idaho PUC, Coeur d' Alene, Idaho, June 14, 2018.

5. Transcript of Public Hearing before the Idaho PUC, Moscow, Idaho, June 12, 2018

6. Decision of the Idaho PUC, In Re PacifiCorp, Case No.PAC - E-99-1 April 15, 1988

7. Order Number 22468 of the Idaho PUC, In the Matter of Idaho Power Company, seeking to Migrate Case IPC - E - 89-3, April 1, 1989

8. Decision of the Idaho PUC, In Re Idaho Power, Case No. IPC-E-92-9, Order No. 24676, January 27, 1993

9. Order Number 25241 of the Idaho PUC, In Re Application of Idaho Power for Authority to Sell, Case No. IPC-E-93-20, November 1, 1993

10. Final Order 28213 of the Idaho PUC, Joint Application of PacifiCorp and Scottish Power, PLC, Case No. PAC-E-99-1 November 15, 1999

11. Final Order 28505 of the Idaho PUC, In Re United Water Idaho Inc., Case No.UWI - W-00-1, September 5, 2000

12. Decision of the Idaho PUC, In Re Transfer and Sale of Assets to the United States Department of Justice, Federal Bureau of Investigation Order No.33501 April 13, 2016

13. Avista and Hydro One Joint Comments In Support Before the Idaho PUC, filed June 20, 2018

B. LEGISLATIVE HISTORY

1. Journal of the Idaho House of Representatives, January 22, 1951, page 75

2. Journal of the Idaho State Senate, January 22, 1951, page 78

3. Session Laws 1951, Chapter 3, Section 1, page 4

4. Report of the Attorney General of Idaho, 1951-1952 "The Washington Water Power Case," pages 10-11

5. The Idaho Statesman, Boise, Idaho "Bill Passes Banning Public Utility Sales to Governmental Agencies" January 23,1951, page 6

6. Session Laws 1982, Chapter 7, Section 1, page 10

C. COURT CASES AND RELATED DOCUMENTS

1. Idaho Power Company v. State, By and Through the Department of Water Resources, et al, 104 Idaho 515, 661 P 2d 741 (1983)

2. Cross-Appellant's Brief of the Public Utilities Commission, filed December 11, 1980, in the above case.

3. Brief of Respondents Mud Flat Canal Company, et al, filed March 17, 1981 in the above case.

4. Thompson v. State, 2018 WI 944 (Id Ct App)

5. KGF Development, LLC v. City of Ketchum, 149 Idaho 524, 236 P 3d 1284 (2010)

6. U.S. v. Pauler, 857 F 3d 1073 (USCCA 10th Cir, 2017)

7. U.S. v. Corr, 543 F2d 1042 (USCCA 2nd Cir, 1976)

8. In Re Decision on Joint Motion to Certify Question of Law to the Idaho Supreme Court, 2018 WL 472145 (Id. Sup Ct.)

D. STATUTES

1. Idaho Code Section 61-327

2. Idaho Code Section 26-2702(8), definition of "control"

3. Idaho Code Section 30-1701 (8), definition of "control"

E. OTHER SOURCES

1. Letter of the Idaho PUC to Jonathan Katz, Secretary, U.S. Security and Exchange

Commission re: PacifiCorp and Scottish Power, PLC Merger, February 4, 2000

2. Black's Law Dictionary, 10th Edition (2014)

ANALYSIS AND OPINION

I.

THE STATUTE AT ISSUE

In pertinent parts, Idaho Code 61-327 provides:

> "Section 61-327. ELECTRIC UTILITY PROPERTY - - ACQUISITION BY CERTAIN PUBLIC AGENCIES PROHIBITED - - No title to or interest in any public utility . . . . . property located in this state which is used in the generation, transmission, distribution or supply of electric power or energy to the public or to any portion thereof, shall be transferred or transferable to or acquired by, directly or indirectly, by and means or device whatsoever, any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state; or any person, firm, association, corporation or organization acting as trustee, nominee, agent or representative for, or in concert or arrangement with, any such government or municipal corporation quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized or existing under the laws of this state or any other state, whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized under the laws of any other state, not coming under or within the definition of any electric public utility or an electrical organization as contained in chapter 1, title 61, Idaho Code, and subject to the jurisdiction, regulation and control of the public utilities commission of the state of Idaho under the public utilities law of the state . . . . . ".

II.

THE IPUC HISTORIC VIEW OF THE TEXT AND STRUCTURE OF THE STATUTE

In a Cross-Appellant's Brief filed by the Idaho Public Utilities Commission (IPUC) in the 1983 Idaho Power Case, that state agency before whom this application is now pending, tracking

the law's text, segmented Idaho Code 61-327 into three sections for discussion and analysis purposes.

At page 50 of the Brief, the Commission recounts that an operating property transfer by any means whatsoever of title or interest to a utility company is covered by the statute. At page 51, the statutory focus on the class of entities to which such property MAY NOT be transferred is discussed. Per the Commission:

> "This part of the section prohibits transfer of an electric utility's operating property to any governmental or municipality entity or any entity organized or controlled by a governmental or municipality entity. It further prohibits transfers in concert or arrangement with any person or representative acting for or representing a government or municipal corporation or governmental or political unit."

Finally at page 52, the Commission offers this conclusion as to one other class of prohibited recipients:

> "The final part of this section prohibits transfer of any interest of any electric utility's operating property to an entity organized under the laws of any other state unless that entity is an electric public utility subject to the jurisdiction of the Commission. This prohibition, like the prohibition against transfer of operation property to governmental or political entities or in concert or arrangement with governmental or political entities or their representatives, is absolute."

Over the intervening years, the IPUC has not further elaborated upon its view of this statute, as far as is known. In a letter to the U.S. Securities and Exchange Commission dated February 4, 2000, over the signature of Stephanie Miller, Administrator of the Utilities Division, the IPUC explained that a foreign utility company's acquisition of a locally managed utility which did not compromise state retention of regulatory authority was acceptable to it. No mention was made of Idaho Code 61-327.

III.

THE AVAILABLE LEGISLATIVE HISTORY OF IDAHO CODE SECTION 61-327

The statute first saw construction as House Bill 26 during the 1951 Regular Session of the Idaho State Legislature. Although no committee notes or formal position papers or transcripts are extant, four sources do give some background on the issue. The Report of the Attorney General, 1951-1952 by Robert E. Smylie, pages 10-11, explains the necessity for the statute and the legal aftermath which subsequently followed, thusly:

"The 1951 Legislature enacted a statute which forbade acquisition by a municipal corporation of another state of facilities for the generation or transmission of electrical energy in Idaho. The statute was patently aimed at preventing acquisition by Public Utility Districts of the State of Washington of the operating properties of the Washington Water Power Company located in North Idaho. The enactment of the statute was productive of the most time consuming litigation in which the office has been engaged in the period reported in this report. Our efforts were directed at the problem of securing enforcement of the new statute.

The Washington Water Power Company was then a wholly owned subsidiary of American Power and Light Company. In 1942, the American Company had been ordered by the Securities & Exchange Commission of the United States to divest itself of its operating properties, including the Washington Company. In 1951, the American Washington Company to the Washington State Public Utility Districts. Certain citizens of the Public Utility Districts undertook to restrain the purchase by the Districts on the ground that acquisition of the Idaho properties by the Washington Districts was beyond their power. The Washington State Courts so held and enjoined the sale and purchase as then proposed.

Thereupon, we urged the Securities & Exchange Commission to enforce its 1942 order of dissolution by taking mandatory action against the American Company. We suggested that the proper method of accomplishing a divestiture of the Washington Company was by distribution of the Washington Company common stock to the stockholders of the American Company, pro rata as their ownership in the American Company appeared.

After a series of hearings the Securities & Exchange Commission ordered that such divestiture occur not later than January 1, 1952 unless plans were then in process of completion which would effect some other disposition of the Washington Company. Just prior to the deadline, the American Company filed a plan for another sale of the Washington Company to the Public Utility Districts and to an Idaho Corporation not yet formed. It developed that no contract of sale had been entered into between the proposed parties and that the Idaho corporation, while non-profit in character, would in effect by another holding company for the operating property. We felt compelled to resist this plan and made appropriate representation to the Securities & Exchange Commission. An order was entered setting the American plan for sale and, the plan for divestiture by distribution

down for hearing.

> The Public Utility Districts thereupon sought a restraining order in the U.S. Circuit Court of Appeals fo the Ninth Circuit against holding the hearing. We joined the Securities Commission in seeking to have the restraining order dissolved and the petition for review of the Commission's action dismissed. The Court agreed with this position, dismissed the petition for review and dissolved the restraining order. The Commission thereupon ordered the hearing. The American Company then filed a plan for distribution in accordance with our initial suggestion to the Commission. That distribution was finally accomplished on August 21, 1952 and the Washington Company is now an independent operating utility, without holding company control of any kind. The purposes of the 1951 statute have been rendered effective. We entered the litigation at the Federal administrative level in order to avoid long, difficult and costly litigation in our own State Courts, and in the several United States Courts."

The action by the Idaho Legislature in reaction to the perceived utility sale threat was compressed into a single day 67 years ago. Two official journals report the detail:

The Journal of the Idaho House of Representatives for January 22, 1951 at page 75 indicates that the body suspended its rules, "this being a case of urgency," and passed the House Bill 26 by a tally of 47 ayes, 7 nays, and 5 excused. On that same day, the Senate, under like emergency procedures, adopted the Bill without amendment, voting 37 in favor, 3 no and 4 excused. (Journal of the Idaho State Senate, January 22, 1957, page 78) Governor Len Jordan signed it into law the next day.

The final history source is a local newspaper. Although no floor debates were then officially recorded, an article published in the Idaho Statesman the next day, written by Political Editor John Corlett, vividly details the swift and vigorous battles in both houses. Significantly, the primary purpose of the Bill was not to prevent a loss of regulatory supervision. Rather, a threatened loss of tax revenues mostly motivated the bill.

> "The public utility measure came up in the House after a noon hour recess and after Democratic and Republican members held separate caucuses. Suspension of the rules was oked by 51 to 3 vote.
>
> It immediately became obvious that Rep. Jesse Vetter, the veteran Democrat from Kootenai, was prepared to scrap. Twice he objected to moves for unanimous consent to have the clerk stop reading the lengthy bill and have it entered on the record as read in full. And so the house sat quietly as Chief Clerk C. A. Bottolfsen droned through the seven closely-typed pages. Then Rep. David Doane (K- Ada)

assistant Republican floor leaders, opened the debate for the bill's supporters. He explained that the major purpose was to protect power users of Idaho, particularly those in North Idaho, "to be sure that the electric utility properties be owned in Idaho and not escape taxation."

He told the house that there was now pending negotiations between the Washington Water Power company and the PUD group from Washington for the sale of the former's north Idaho properties.

"How soon they are going through with the deal, we don't know," said Doanne, "but it is essential that this bill be passed right away." . . . .

Closing debate, Doanne emphasized that his interest in the bill was dictated by his conviction that the measure was to the interest of the state. He said that if the north Idaho properties were sold before the legislature could stop it, the state would lose at least $460,000 in revenues . . . .

In the Senate, Sen. E.J. Soelbert (R-Butte), the majority floor leader, launched the debate by saying there was "great urgency" for passage of the measure because of negotiations now in progress in New York City.

"If the sale is made prior to passage of this bill, Idaho would stand to lose heavily in taxes. If the Washington Water Power company were transferred to the tax-exempt PUDs in Washington, the state of Idaho would stand to lose a lot of money."

(Idaho Statesman, January 23, 1951, page 6)

These verbatim and attributed comments reported by the local newspaper constitute the only debate detail extant, as far as is known. No official legislative summaries or transcripts of floor dialog were kept by the Idaho Legislature in 1951. In fact, no such written materials are produced by this State even today.

IV.

THE IDAHO SUPREME COURT APPROACH TO STATUTORY CONSTRUCTION

Any ruling which the Idaho Public Utilities Commission makes will potentially be reviewed by an appeal to Idaho's highest court. Idaho regulatory bodies commonly make initial interpretations of statute within their realm of authority and expertise. If appealed, our courts scrutinize the agency holding with some deference. However, the judiciary has the ultimate

responsibility to construe legislative language to determine the law. J.R. Simplot Company, Inc. vs Idaho State Tax Commission, 120 Idaho 849, 820 P 2d 1206 (1991) Therefore, the traditional rules applied on appeal by the Idaho Supreme Court to scrutinize and discern statutory meaning become relevant to this predictive opinion. Appellate precedent in Idaho holds:

> "This Court exercises free review over the application and construction of statutes. Where the language of a statute is plan and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. The language of the statute is to be given its plain, obvious, and rational meaning. If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. When this Court must engage in statutory construction because an ambiguity exist, it has the duty to ascertain the legislative intent and give effect to that intent. To ascertain such intent, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute and its legislative history. It is incumbent upon a court to give an ambiguous statute an interpretation which will not render it a nullity. Constructions of an ambiguous statute that would lead to an absurd result are disfavored."

(Summarized in Thompson v. State, 2018 WL 944 649, (Ct App. Page 4, citations omitted)

Put another way:

> "The purpose of statutory interpretation is to ascertain and "give effect to legislative intent. Statutory interpretation begins with the literal words of the statute, which are the best guide to determining legislative intent. The words of a statute should be given their plain meaning, unless a contrary legislative purpose is expressed or the plain meaning creates an absurd result. If the words of the statute are subject to more than one meaning, it is ambiguous and we must construe the statute "to mean what the legislature intended it to mean. To determine that intent, we examine not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history."

KFG Development, LLC. vs City of Ketchum, 149 Idaho 524 527-528 236 P3d 1284 (2010) (citations omitted)

These principles can and should be applied to the pertinent issues facing the IPUC as it

considers two critical questions arising from Idaho Code Section 61-327.

V.

THE CONCEPT OF "STATE"

As to the pending Application, it is clearly a relevant issue as to whether the language of Idaho Code Section 61-327 was intended to bar government organizations such as the Province of Ontario from being involved in Idaho public utility transactions, since Hydro One was formerly a provincial entity and the Canadian entity will remain a shareholder of approximately 43% of shares outstanding in a parent entity, after the proposed transaction is concluded.

Of significance, it appears that the Idaho PUC has not previously been concerned with examining the type or nature of shareholders owning equities in foreign-related utilities operating in Idaho. This is understandable in modern, worldwide corporate terms, as the IPUC itself has explained:

> " With the increased globalization of economies and cultures, the concept of an "American" company is becoming more obscure. Today's increasingly competitive markets require businesses to search far and wide for materials, labor, and business opportunities. Large businesses whose stock is publicly traded in this county are often owned, at least in part, by foreign interests. Similarly, U.S. corporations and individuals often engage in the acquisition of or partnership with foreign businesses. In short, corporate mergers make the news almost daily.
>
> It was often expressed during the public hearings in this case that the "country" of Scotland should not be allowed to take over an "American" corporation. In fact, Scottish Power no more constitutes the Scottish government than PacifiCorp constitutes the government of the United States. PacifiCorp is an Oregon corporation whose stock is publicly traded and owned by people living throughout the country, and the world. Not one of PacifiCorp's current members of the board of directors lives in Idaho.
>
> Both Scottish Power and PacifiCorp are investor-owned businesses engaging in precisely the type of economic posturing that many large business must consider as an option to remain competitive in today's marketplace. It just so happens that they operate in an industry that is governmentally regulated. We find that the denial of the merger in this case simply by virtue of the fact that Scottish Power is incorporated in another country would put this Commission on very tenuous legal footing. The constitutional and statutory structure under which this

> Commission functions and pursuant to which we must review this merger does not allow such a ruling.
>
> Indeed, the founding document of this country potentially prohibits such discrimination. Article 1, Section 8 of the United States Constitution, known as the "Commerce Clause," vests in the United States Congress the power "to regulate commerce with foreign nations, and among the several states." The fundamental principle embodied in the General Agreement on Trade in Services (GATS - a component of the General Agreement on Tariffs and Trade (GATT) is that foreign countries who are signatories to the agreement will have "most favored nation" status in their dealings with the United States. This means that the United States is not permitted to discriminate against service providers who are citizens of other states or foreign countries. Thus, if any state has a law on its books giving favored treatment to its own citizens, that law will be pre-empted by the GATS treaty."
>
> (See Final Order, 2813, Joint Application of PacifiCorp and Scottish Power, November 15, 1999, pages 34-35.)

United Kingdom corporate registry records indicate that at or about the time of the 1998 approval by the IPUC of Scottish Power's acquisition of PacifiCorp at least 18 governmental entities owned more than 52,000,000 shares of stock in the oversees entity. It was not a regulatory issue at that time.

Likewise, the stock ownership composition of Suez Water Idaho, Inc., a Boise water distribution utility, formerly known as United Water, and its relationship with its foreign parent, Suez Lyonaise des Eaux, a French multinational corporation appears not to have been a subject of examination when that entity last appeared before the Commission. (See Final Order 28505, In Re. United Water Idaho, Inc., September 5, 2000)

The 1951 era text written by the Idaho Legislature fairly tightly refers to "any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state." Ownership of Idaho utility operating properties by such units is banned. The phrase is repeated three times in the statutory language.

Giving the terms their plain, simple and ordinary meaning, as is required by Idaho law, and noting that all of the described subsidiary units mentioned are typically organized under American state law as lesser units of the sovereign, the "state" referenced to in Idaho Code Section 61-327 means a state of the United States. It was not intended, nor does it without impermissable broadening, refer to a foreign nation or any subdivision thereof.

This straightforward conclusion is made even more evident, if the principles of legislative history are utilized. In the context of 1951, as explained above, the targets were our sister state of Washington and its potentially problematic quasi-municipal corporations called "public utility districts." The problem detected and prevented in a legislative rush was a threatened loss of tax revenue, should private utility operating property located within Idaho become public-entity owned, and thus exempt from taxation. To a lesser degree, a potential loss of unfettered regulatory control by the IPUC was also of concern. Washington state and its lesser entities are the emblematic examples of what these words mean. They clearly confirm that the term "state" must be simply and plainly meant.

Although no Idaho case law interprets this section, as to this phrase, Idaho Power Company v. State, 104 Idaho 515, 661 P 2d 741 (1983) references the statute and confirms that water rights in contiguous Oregon and Washington are not utility operating property within the meaning of the statute.

It is also worth noting that even under federal law the term "state" is often narrowly construed.

> " The government argues that the term "State" in Section 921 (a)(33)'s definition section should be interpreted to mean "State and local," so that a municipal misdemeanor conviction would constitute a misdemeanor under state law. In so arguing, however, the government completely ignores the fact that Section 921 and 922 clearly and consistently differentiate between states and municipalities and between state laws and municipal ordinances. These sections, like the rest of the Gun Control Act, repeatedly use the phrases "State and local" or "State or local" when reference is made both to states and municipalities, and the government cites to no other provision in this statute where the word "State" is even arguably meant to encompass both state and local governments or laws. The statute's repeated use of the term "local" in juxtaposition with the term "State" would not be necessary if Congress intended for the term "State" to refer both to the state and to all of the political subdivisions within it." If we were to interpret the term "State" in this manner, then much of the statute's language would be unnecessary and superfluous, contrary to the "settled rule that a statute must, if possible, be construed in such fashion that every word has some operative effect." On the other hand, if we were to interpret the term "State" to mean something different in Section 921 (a)(33) than it means in all of the proceeding and following subsections, then we would be disregarding another "normal rule of statutory construction," the rule that identical words used in different parts of the same act are intended to have the same meaning. The government provides no persuasive reason why we should depart from either of these well-established principles of statutory

interpretation in this case."

U.S. v. Pauler, 857 F3 1073 1075-1076 (USCCA. 10th Cir. 2017)

Various Idaho statutes, where the Legislature actually intended a law to apply to certain national extraterritorial aspects, specifically mention the word "province," as well as the word "state." (See for example Idaho Code Sections 19-5202, 41-340, 41-1003, 41-3228, 63-2401, 67-7801 and 72-218) Presumably, the 1951 Legislature could have done the same

Thus, Idaho Code 61-327 is not intended nor designed to apply to the Province of Ontario. Even were it to so do, the Idaho Public Utility Commission has not typically examined or previously been concerned about foreign governments holding minority stock ownership in utility corporations operating in Idaho.

VI.

THE CONCEPT OF "CONTROL"

The IPUC staff has expressed concern about the statutory references to the term "controlling interests" in 61-327 as possibly being an impediment to this transaction, the argument being that if the government of the Province of Ontario will hold approximately 43% of the stock outstanding in Hydro One, it has or may have "effective control" of the enterprise and its downstream utility operating properties. Recent Canadian political events have impacted the governance of the entity, highlighting the existence of this issue for review.

Indeed, there are extant United States Securities and Exchange Commission regulations which discuss such an indirect control concept. Further, American federal courts have discussed the potential breadth of the term:

> "While there is no statutory definition of "control," its concept is not a narrow one. Its determination is a question of fact which depends upon the totality of circumstances including an appraisal of the influence upon management and policies of a corporation by the person involved." Control may be excerted in other ways than by a vote stock ownership being only one aspect or control. A person may be in control even though he does not own a majority fo the voting stock."

U.S. v. Corr, 543 F 2d 1042, 1050 (USCCA 2, 1976) (citation omitted)

In statutes other than that one at issue here, Idaho law too has indirect corporate control definitions in specific purpose laws enforced by other regulatory agencies besides the IPUC.

> " Control means . . . A person who, directly or indirectly owns of record

> or beneficially holds with power to vote or holds proxies with discretionary authority to vote, twenty percent (20%) or more of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control that corporation."

Idaho Code Section 26-2702 (8), Title 26, Banks and Banking, Chapter 27, Business and Industrial Development Corporations, enforced by the Idaho Department of Finance This statute was not adopted until 1989, some thirty eight years after the law in question.

> "Control," "controlling," "controlled by" or "under common control with" means the possession, directly or indirectly, of the power to direct or to cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. A person's beneficial ownership of ten per cent (10%) or more of the voting power of a corporation's outstanding shares entitled to vote in the election of directors creates a presumption that the person has control of the corporation. A person is not considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of avoiding the provisions of this chapter, as an agent, bank, broker, nominee, custodian or trustee for one (1) or more beneficial owners who do not individually or as a group have control of the corporation."

Idaho Code Section 30-1701 (8), Title 30, Corporations, Chapter 17, Business Corporation Act, and generally overseen by the Idaho Secretary of State and enforced by private action. The law was passed in 1988.

Neither of those two code section definitions are automatically transportable into Idaho Code 61-327 under Idaho law.

> "However, such definitions in any section of the Idaho Code are not typically or universally applied to or utilized to inform or construct other unrelated section of Idaho's laws. Statutory definitions provided in one act do not apply for all purposes and in all contexts, but generally only what they mean where they apply in the same act

In Re Decision on Joint Motion to Certify Question of Law to the Idaho Supreme Court, 2018 WL 472145 (Id. Supreme Court, Docket No. 45187)

Therefore, the proper and best reasoned Idaho approach for illuminating the meaning of the concept of control as found in 61-327 is to begin with the literal words of the statute and their plain, usual and ordinary meaning as a whole. The statutory phrase in question is "owned or controlled."

Black's Law Dictionary defines the following three terms:

> A. "CONTROL. The direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or otherwise, the power of authority to manage, direct or oversee B. CORPORATE CONTROL. Corporations. 1. Ownership of more than 50% of the shares in a corporation. Also termed effective control; working control. 2. The power to vote enough of the shares in a corporation to determine the outcome of matters that the shareholders vote on.
>
> C. WORKING CONTROL. 1. The effective control of a corporation by a person or group who owns less than 50% of the stock control."
>
> Black's Law Dictionary, 10th Edition, 2014, page 403 (emphasis added)

Thus, corporate control, in the most ordinary, plain usage means "majority shareholding."

In the context of the historic issues of 1951, as faced by the Idaho Legislature, the two words chosen by the lawmakers, "owned or controlled" were clearly intended to mean the same thing, not alternatives or shades of distinction. It was the threatened complete divestiture of the utility operating properties and the corporate entity which controlled them which caused the emergency action, driving the adoption of this statute. No discussion of "working control" of a corporation was contemplated nor intended by the phrase "directly or indirectly," even though such issues may arise in modern corporate governance. Idaho Code 61-327 should be interpreted to prohibit majority control of a utility's stock, not prevent some theoretical, hypothetical, speculative or subjective concept of corporate influence by lesser ownership. The loss of taxation which worried the local legislators in 1951 was driven by the threatened sale of 100% of the ownership of the involved utility. In fact, the title to and control of and taxability of the tangible assets of the utility was the actual issue, not stock ownership.

It is also worth noting that the IPUC, as far as I can determine, has never gone behind majority ownership numbers to predict some SEC-type concept of indirect corporate influence, as contrasted with the simple majority ownership test envisioned by Idaho Code 61-327. Neither Hydro One nor Olympus Equity nor Avista is a governmental entity owned or controlled, directly or indirectly, by the Province of Ontario, even if the Province were to de deemed a "state" under the language of the Idaho law.

VII.

THE EVIDENT LEGISLATIVE INTENT

As noted above, the language of Idaho Code 61-327 is plain and unambiguous as to the

terms "state" and "controlled." Also as urged above, the legislative history of the statute provides and reinforces these interpretations, consistent with the simplest view of same terms, even if one concludes that phraseology or language of the law is not "clear and unambiguous."

The context of the literal words of the statute, the discernable public policy behind the law and such legislative history as is reconstructed above make it apparent that the threat that certain Washington State public utility districts might acquire the entirety of the common stock of Washington Water Power drove the drafting and passage of this legislation. The reported debates as captured by the Idaho Statesman reflect that both the House, where the Bill originated, and the Senate, where it rushed through in mere minutes, were mostly focused upon the loss of Idaho tax revenues. Both floor sponsors so said in urging immediate votes, so as to preempt the timing of a pending stock sale transaction to the Washington PUDs.

Nothing about the Application pending before the IPUC suggests any transfer to a public entity which would be non-taxable in Idaho. No loss of privately held property subject to taxes is threatened. The transaction, as structured, would leave the IPUC with unfettered regulatory control over Avista and the utility operating property. Accordingly, nothing about either the legislative history of 61-327 or its language as informed by that history is prohibitive to the pending Application.

VIII.

CONCLUSION:

For each and all of the above reasons, I conclude that the IPUC does not have a basis under Idaho Code 61-327 to deny the pending Application.

David H. Leroy

Attorney at Law

Motion to Suspend Rules

House of Representatives, Boise, Idaho,
January 22, 1951.

Mr. Speaker:

I move that all rules of the House interfering with the immediate passage of House Bill No. 26 be suspended; that the portions of Section 15, Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that House Bill No. 26 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

Moved by Mr. Young.

Seconded by Mr. Murphy.

Roll call resulted as follows:

AYES—Barrett, Bell, Blick, Brewer, Cenarrusa, Chalfant, Coiner, Commons, Davis, Dinnison, Doane, Doolittle, Drevlow, Eastman, Emery, Everett, Gardner, Gooch, Gowey, Grayot, Gunnell, Hampton, Hanson, Isaacson, Jensen, Jones, Larsen, LaTurner, Mendenhall, Merrill, Miller, Mills (Boise), Monroe, Munk, Murphy, Nielsen, Paulson, Payton, Pyle, Ricks, Roche, Sewell, Storey, Vandenberg, Vincent, Westfall, Willes, Wilson, Winkler, Young, Mr. Speaker. Total—51.

NAYS—Kaschmitter, Smith, Vetter. Total—3.

Absent and excused—Gaffney, Gwartney, Holm, McDevitt, Vernon. Total—5.

Total—59.

Whereupon, the Speaker declared that more than two-thirds having voted in the affirmative, the motion prevailed, the rules were suspended, and House Bill No. 26 was read the first time by title, second time by title, and the third time at length, section by section, and placed upon its final passage.

House Bill No. 26 was read the first time by title, the second time by title, and third time at length, section by section, and placed before the House for final consideration.

The question being: "Shall House Bill No. 26 pass?"

Roll call resulted as follows:

AYES—Barrett, Bell, Blick, Brewer, Cenarrusa, Chalfant, Coiner, Commons, Davis, Dinnison, Doane, Doolittle, Emery, Everett, Gardner, Gooch, Gowey, Grayot, Gunnell, Hampton, Hanson, Isaacson, Jensen, Jones, Larsen, LaTurner, Mendenhall, Merrill, Miller, Mills (Boise), Monroe, Munk, Murphy, Nielsen, Paulson, Pyle, Ricks, Roche, Sewell, Storey, Vincent, Westfall, Willes, Wilson, Winkler, Young, Mr. Speaker. Total—47.

NAYS—Drevlow, Eastman, Kaschmitter, Payton, Smith, Vandenberg, Vetter. Total—7.

Absent and excused—Gaffney, Gwartney, Holm, McDevitt, Vernon. Total—5.

Total—59.

Whereupon, the Speaker declared House Bill No. 26 passed.

Title was approved and the bill ordered transmitted to the Senate.

At this time the Speaker excused the Appropriations Committee.

Motions and Resolutions
Motion to Suspend Rules

Senate Chamber, Boise, Idaho,
January 22, 1951.

Mr. President:

I move that all rules of the Senate interfering with the immediate passage of House Bill No. 26 be suspended; that the portions of Section 15, Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that House Bill No. 26 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

Moved by Senator Soelberg.

Seconded by Senator Starr.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

AYES—Albertini, Alexander, Blackstock, Bolton, Burns, Burstedt, Buxton, Campbell, Cook, Collin, Costley, Davis, Detweiler, Farthing, Geaudreau, Goodwin, Irwin, Jackson, Johnston, Jones, Meek, Middlemist, Moore, Murdock, Nock, Ransom, Schwendiman, Schwiebert, Slusser, Soelberg, Sorensen, Starr, Tate, Thatcher, Wetherell, Wherry, Wright. Total—37.

NAYS—Hamilton, Ingalls, Phillips. Total—3.

Absent and not voting—None.

Excused—Bahr, Lowry, Miller and Snook. Total—4.

Two-thirds having voted in the affirmative, the President declared the rules suspended.

House Bill No. 26 was read the first time by title, the second time by title, and third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Albertini, Alexander, Blackstock, Bolton, Burns, Burstedt, Buxton, Campbell, Cook, Collin, Costley, Davis, Detweiler, Farthing, Geaudreau, Goodwin, Irwin, Jackson, Johnston, Jones, Meek, Middlemist, Moore, Murdock, Nock, Ransom, Schwendiman, Schwiebert, Slusser, Soelberg, Sorensen, Starr, Tate, Thatcher, Wetherell, Wherry, Wright. Total—37.

NAYS—Hamilton, Ingalls, Phillips. Total—3.

Absent and not voting—None.

Excused—Bahr, Lowry, Miller and Snook. Total—4.

Whereupon the President declared the bill passed.

Title was approved and the bill ordered returned to the House.

There being no objection, the Senate returned to the Ninth Order of Business.

Messages from the House

House of Representatives, Boise, Idaho,
January 22, 1951.

Mr. President:

I have the honor to return herewith Senate Concurrent Resolution No. 3 which has passed the House.

C. A. BOTTOLFSEN,
Chief Clerk.

Motion to Suspend Rules

House of Representatives, Boise, Idaho,
January 22, 1951.

Mr. Speaker:

I move that all rules of the House interfering with the immediate passage of House Bill No. 26 be suspended; that the portions of Section 15, Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that House Bill No. 26 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

Moved by Mr. Young.

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Roll call resulted as follows:

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NAYS—Kaschmitter, Smith, Vetter. Total—3.

Absent and excused—Gaffney, Gwartney, Holm, McDevitt, Vernon. Total—5.

Total—59.

Whereupon, the Speaker declared that more than two-thirds having voted in the affirmative, the motion prevailed, the rules were suspended, and House Bill No. 26 was read the first time by title, second time by title, and the third time at length, section by section, and placed upon its final passage.

House Bill No. 26 was read the first time by title, the second time by title, and third time at length, section by section, and placed before the House for final consideration.

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NAYS—Drevlow, Eastman, Kaschmitter, Payton, Smith, Vandenberg, Vetter. Total—7.

Absent and excused—Gaffney, Gwartney, Holm, McDevitt, Vernon. Total—5.

Total—59.

Whereupon, the Speaker declared House Bill No. 26 passed.

Title was approved and the bill ordered transmitted to the Senate.

At this time the Speaker excused the Appropriations Committee.

Motions and Resolutions
Motion to Suspend Rules

Senate Chamber, Boise, Idaho,
January 22, 1951.

Mr. President:

I move that all rules of the Senate interfering with the immediate passage of House Bill No. 26 be suspended; that the portions of Section 15, Article 3 of the Constitution of the State of Idaho, requiring all bills to be read on three several days be dispensed with, this being a case of urgency, and that House Bill No. 26 be read the first time by title, second time by title, and the third time at length, section by section, and be put upon its final passage.

Moved by Senator Soelberg.

Seconded by Senator Starr.

The question being, "Shall the rules be suspended?"

Roll call resulted as follows:

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NAYS—Hamilton, Ingalls, Phillips. Total—3.

Absent and not voting—None.

Excused—Bahr, Lowry, Miller and Snook. Total—4.

Two-thirds having voted in the affirmative, the President declared the rules suspended.

House Bill No. 26 was read the first time by title, the second time by title, and third time at length, section by section, and placed before the Senate for final consideration, the question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES—Albertini, Alexander, Blackstock, Bolton, Burns, Burstedt, Buxton, Campbell, Cook, Collin, Costley, Davis, Detweiler, Farthing, Geaudreau, Goodwin, Irwin, Jackson, Johnston, Jones, Meek, Middlemist, Moore, Murdock, Nock, Ransom, Schwendiman, Schwiebert, Slusser, Soelberg, Sorensen, Starr, Tate, Thatcher, Wetherell, Wherry, Wright. Total—37.

NAYS—Hamilton, Ingalls, Phillips. Total—3.

Absent and not voting—None.

Excused—Bahr, Lowry, Miller and Snook. Total—4.

Whereupon the President declared the bill passed.

Title was approved and the bill ordered returned to the House.

There being no objection, the Senate returned to the Ninth Order of Business.

Messages from the House

House of Representatives, Boise, Idaho,
January 22, 1951.

Mr. President:

I have the honor to return herewith Senate Concurrent Resolution No. 3 which has passed the House.

C. A. BOTTOLFSEN,
Chief Clerk.

CHAPTER 2

(H. B. No. 21)

AN ACT

DIRECTING THE STATE AUDITOR TO MAKE A PAYMENT TO THE COUNTIES FROM THE STATE HIGHWAY FUND BETWEEN JANUARY 15 AND FEBRUARY 1, 1951, IN ACCORDANCE WITH SECTION 40-405, IDAHO CODE, PRIOR TO ITS AMENDMENT BY CHAPTER 83, IDAHO SESSION LAWS OF THE EXTRAORDINARY SESSION OF 1950; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the provisions of Chapter 83, Idaho Session Laws of the Extraordinary Session of 1950, to the contrary notwithstanding, the State Auditor shall, not earlier than January 16, 1951, and not later than February 1, 1951, pay to the several counties of the state from moneys in the State Highway Fund an amount computed in accordance with the provisions of Section 40-405, Idaho Code, prior to the amendment of that Section by the said Chapter 83. Nothing in this act shall be construed to apply to any other payment from the State Highway Fund than the payment in the year 1951, for the calendar year 1950.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect from and after its passage and approval.

Approved January 19, 1951.

CHAPTER 3

(H. B. No. 26)

AN ACT

RELATING TO THE RIGHTS, POWERS AND DISABILITIES OF CERTAIN GOVERNMENT OR MUNICIPAL CORPORATIONS, QUASI-MUNICIPAL CORPORATIONS, OR GOVERNMENTAL OR POLITICAL UNITS, SUBDIVISIONS OR CORPORATIONS, ORGANIZED OR EXISTING UNDER THE LAWS OF ANY OTHER STATE, OR ANY PERSON, FIRM, ASSOCIATION, CORPORATION OR ORGANIZATION ACTING AS TRUSTEE, NOMINEE, AGENT OR REPRESENTATIVE FOR, OR IN CONCERT OR ARRANGEMENT WITH, ANY SUCH GOVERNMENT OR MUNICIPAL CORPORATIONS, QUASI-MUNICIPAL CORPORATIONS OR GOVERNMENTAL OR POLITICAL UNITS, SUBDIVISIONS OR CORPORATIONS, AND PROVIDING THAT NO TITLE TO OR INTEREST IN ANY PROPERTY LOCATED IN THE STATE OF IDAHO USED IN THE GENERATION, TRANSMISSION, DISTRIBUTION OR SUPPLY OF ELECTRIC POWER AND ENERGY TO THE PUBLIC OR ANY PORTION THEREOF, SHALL BE TRANSFERRED OR TRANSFERABLE TO, OR ACQUIRED BY, DIRECTLY OR INDIRECTLY, BY ANY OF THE ABOVE DESCRIBED PARTIES, OR TO ANY COMPANY, ASSOCIATION, ORGANIZATION OR CORPORATION, ORGANIZED OR EXISTING UNDER THE LAWS OF THIS OR ANY OTHER STATE, WHOSE ISSUED CAPITAL STOCK, OR OTHER EVIDENCE OF OWNERSHIP, MEMBERSHIP OR INTEREST THEREIN, OR IN THE PROPERTY THEREOF, IS OWNED OR CONTROLLED BY ANY SUCH GOVERNMENT OR MUNICIPAL CORPORATION, QUASI-MUNICIPAL CORPORATION OR GOVERNMENTAL OR POLITICAL UNIT, SUBDIVISION OR CORPORATION, OR ANY COMPANY, ASSOCIATION, ORGANIZATION OR CORPORATION, ORGANIZED UNDER THE LAWS OF ANY OTHER STATE, WHICH IS NOT A PUBLIC UTILITY OR ELECTRICAL CORPORATION AS DEFINED IN CHAPTER 1, TITLE 61, IDAHO CODE, AND SUBJECT TO THE JURISDICTION, REGULATION AND CONTROL OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO; PROVIDING THAT NO ELECTRIC PUBLIC UTILITY OR ELECTRICAL CORPORATION, AS DEFINED IN CHAPTER 1, TITLE 61, IDAHO CODE, OWNING, CONTROLLING OR OPERATING ANY PROPERTY LOCATED IN THIS STATE, USED IN THE GENERATION, TRANSMISSION, DISTRIBUTION OR SUPPLY OF ELECTRIC POWER OR ENERGY TO THE PUBLIC OR ANY PORTION THEREOF, SHALL SELL, ASSIGN OR TRANSFER, DIRECTLY OR INDIRECTLY, IN ANY MANNER WHATSOEVER, ANY SUCH PROPERTY OR INTEREST THEREIN, OR THE OPERATION, MANAGEMENT OR CONTROL THEREOF, OR ANY CERTIFICATE OF CONVENIENCE AND NECESSITY OR FRANCHISE COVERING THE SAME, EXCEPT WHEN AUTHORIZED BY ORDER OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF IDAHO AFTER PUBLIC NOTICE AND HEARING, AND PRESCRIBING THE CONDITIONS, MANNER, METHOD AND PROCEDURE FOR SECURING SUCH AUTHORITY, AND THE POWERS AND DUTIES OF SAID PUBLIC UTILITIES COMMISSION WITH RESPECT THERETO; PROVIDING THAT ANY SUCH PROPERTY OR INTEREST IN PROPERTY, HEREAFTER TRANSFERRED OR ACQUIRED IN VIOLATION OF THIS ACT, SHALL ESCHEAT TO THE STATE OF IDAHO, AND PRESCRIBING

THE DUTIES OF THE ATTORNEY GENERAL WITH RESPECT THERETO, AND THE MANNER, METHOD AND PROCEDURE FOR SUCH ESCHEAT AND THE SALE OF SUCH PROPERTY OR INTEREST, AND THAT THE PROCEEDS OF SUCH SALE SHALL BE PAID INTO THE STATE TREASURY FOR THE CREDIT OF THE SCHOOL FUND; PROVIDING THAT TRANSFERS OF PROPERTY OR AN INTEREST THEREIN IN VIOLATION OF THIS ACT SHALL BE VOID AS TO THE STATE AND THAT PROPERTIES OR INTERESTS CONVEYED OR TRANSFERRED IN VIOLATION OF THIS ACT SHALL ESCHEAT TO THE STATE; PROVIDING THAT PROOF OF CERTAIN PRESCRIBED FACTS SHALL CONSTITUTE CONCLUSIVE PRESUMPTION OF THE INTENT OR PURPOSE TO EVADE OR AVOID THE PROVISIONS OF THIS ACT, AND PROVIDING FOR OTHER PRESUMPTIONS OR INFERENCES; PRESCRIBING PENALTIES FOR VIOLATIONS OF THIS ACT; PROVIDING A SEPARABILITY AND SAVING CLAUSE AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. No title to or interest in any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall be transferred or transferable to, or acquired by, directly or indirectly, by any means or device whatsoever, any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, organized or existing under the laws of any other state; or any person, firm, association, corporation or organization acting as trustee, nominee, agent or representative for, or in concert or arrangement with, any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized or existing under the laws of this state or any other state, whose issued capital stock, or other evidence of ownership, membership or other interest therein, or in the property thereof, is owned or controlled, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation; or any company, association, organization or corporation, organized under the laws of any other state, not coming under or within the definition of an electric public utility or electrical corporation as contained in Chapter 1, Title 61, Idaho Code, and subject to the jurisdiction, regulation and control of the public utilities commission of the state of Idaho under the Public Utilities Law of this state.

SECTION 2. No electric public utility or electrical corporation as defined in Chapter 1, Title 61, Idaho Code, owning, controlling or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof, shall sell, assign or transfer, directly or indirectly, in any manner whatsoever, any such property or interest therein, or the operation, management or control thereof, or any certificate of convenience and necessity or franchise covering the same, except when authorized to do so by order of the public utilities commission of the state of Idaho. Such authorization and order shall be issued only following public notice and hearing, upon verified application of the parties setting forth such facts as the commission shall prescribe or require, and if the commission shall find that the public interest will not be adversely affected, that the cost of and rates for supplying service will not be increased by reason of such transaction, and that the applicant for such acquisition or transfer has the bona fide intent and financial ability to operate and maintain said property in the public service; provided, that no such order or authorization shall be issued or granted to any applicant or party coming within the prohibitions set forth in this Act. The commission shall have power to issue said authorization and order as prayed for, or to refuse to issue the same, or to issue such authorization and order with respect only to a part of the property involved, and may attach to its authorization and order such terms and conditions as in its judgment the public convenience and necessity may require.

SECTION 3. Any such property or interest in property hereafter transferred or acquired in violation of this Act shall escheat to the state of Idaho. The Attorney General of the state shall institute proceedings in the District Court of any county in which such property, or any portion thereof, is situated, to have such escheat adjudged and decreed. If the property is operating property, the court shall continue the operation thereof under a receiver appointed by and under the control and supervision of the court, pending final determination of the action and the sale and disposition of the property. When the court has entered judgment escheating the property to the state, the court shall thereupon order a sale of the property, or interest therein, in the same manner as prescribed by the laws of the state of

Idaho for the sale of real estate under mortgage foreclosure. Out of the proceeds arising from such sale, any valid liens or claims of third parties shall be paid, and the balance shall be paid into the State Treasury for the credit of the School Fund.

SECTION 4. Every conveyance or transfer of property, or any interest therein, in violation of the provisions of this Act, whether voluntary or involuntary, or though colorable in form, or if made with the intent or purpose to evade or avoid the provisions of this Act, shall be void as to the state, and the property or interest thereby conveyed or transferred, shall escheat to the state as in this Act provided. A conclusive presumption that the conveyance or transfer is made with the intent or purpose to evade or avoid the provisions of this Act shall arise upon proof of any of the following facts:

a. The purchase, acquisition or taking of the property, or interest therein, in the name of a person or party other than persons or parties referred to in Section 1, if the consideration is paid, guaranteed or otherwise secured, or agreed or understood to be paid, guaranteed or otherwise secured, directly or indirectly, by a government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation referred to in Section 1.

b. The taking of the property in the name of a company, association, organization or corporation, if the shares of stock therein, or other evidence of ownership, membership or other interest therein, or in the property thereof, held by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, or any other company, association, organization or corporation, referred to in Section 1, together with such shares or other evidence of ownership, membership or interest held by others but paid for, guaranteed or otherwise secured, directly or indirectly, by any such government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, amount to a majority of the issued stock or other evidence of ownership, membership or other interest therein, or in the property thereof.

c. The purchase, acquisition or holding of the majority of the issued stock, or other evidence of ownership, membership or other interest therein, or the voting control of any such stock or other evidence of ownership, membership

or interest, either directly or indirectly, by any government or municipal corporation, quasi-municipal corporation, or governmental or political unit, subdivision or corporation, or any other company, association, organization or corporation, referred to in Section 1, in any company, association, organization or corporation now or hereafter owning, holding or operating any property located in this state which is used in the generation, transmission, distribution or supply of electric power and energy to the public or any portion thereof.

The enumeration in this section of certain presumptions shall not be construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent or purpose to evade or avoid the provisions of this Act, or escheat as provided for herein.

SECTION 5. If any person, or two or more persons, act, negotiate, participate, attempt, arrange or conspire to make or effect, or to receive or take, a transfer of any real or personal property used for the purposes specified in Section 1 or Section 2 of this Act, or of any interest therein, in violation of the prohibitions contained in Section 1 or of any other provision of this Act, each, any or all of such persons, upon conviction thereof, shall be punished by imprisonment in the county jail or state penitentiary not exceeding two years or by a fine not exceeding $5000, or by both such fine and imprisonment.

SECTION 6. All portions and provisions of this Act are hereby declared to be separable. If any section, paragraph, clause or provision of this Act, or the application thereof to any person or party, or under any facts or circumstances, shall be declared by the courts to be unconstitutional, inoperative or void, the remainder of this Act and its application, and the application of any such provision, to other persons or parties, or under other facts and circumstances, shall not be affected thereby. The legislature hereby declares that it would have passed this Act, and each section, paragraph, clause or provision thereof, irrespective of the fact that any one or more other such provisions might be held to be unconstitutional, inoperative or void.

SECTION 7. An emergency existing therefor, which emergency hereby is declared to exist, this Act shall take effect from and after its passage and approval.

Approved January 23, 1951.

THIRTY-FIRST BIENNIAL REPORT OF THE

Attorney General OF Idaho

1951 - - - 1952

ROBERT E. SMYLIE
Attorney General

in the office. The increased work load is being handled with an increase in personnel amounting to only 20 per cent over the staff during the 1941-1943 biennium.

LITIGATION

A review of the docket section of this report will indicate that we have been able to close many pending cases in the office and that the litigation docket is now in better condition than at any recent time. This has been due in part to the enactment of the new provisions of the Income Tax Law which authorize the Tax Collector to execute and issue warrants of distraint for unpaid taxes. Previously a law suit had to be instituted on each delinquent account. This has not automatically reduced the burden of work in this office by the numerical number of cases, because each distraint warrant requires consultation. However, the litigation burden, with its consequent costs, has been substantially lessened by the new statute. The cases which are now on the docket, however, are complex, and time-consuming in nature. A detailed report of the litigation activity of the office is attached to this report. Some of the more interesting cases are described below.

The Washington Water Power Case

The 1951 Legislature enacted a statute which forbade acquisition by a municipal corporation of another state of facilities for the generation or transmission of electrical energy in Idaho. The statute was patently aimed at preventing acquisition by Public Utility Districts of the State of Washington of the operating properties of the Washington Water Power Company located in North Idaho. The enactment of the statute was productive of the most time consuming litigation in which the office has been engaged in the period reported in this report. Our efforts were directed at the problem of securing enforcement of the new statute.

The Washington Water Power Company was then a wholly owned subsidiary of American Power & Light Company. In 1942, the American Company had been ordered by the Securities & Exchange Commission of the United States to divest itself of its operating properties, including the Washington Company. In 1951, the American Company entered into a contract to sell all of the common stock of the Washington Company to the Washington State Public Utility Districts. Certain citizens of the Public Utility Districts undertook to restrain the purchase by the Districts on the ground that acquisition of the Idaho properties by the Washington Districts was beyond their power. The Washington State Courts so held and enjoined the sale and purchase as then proposed.

Thereupon, we urged the Securities & Exchange Commission to enforce its 1942 order of dissolution by taking mandatory action against

the American Company. We suggested that the proper method of accomplishing a divestiture of the Washington Company was by distribution of the Washington Company common stock to the stockholders of the American Company, *pro rata* as their ownership in the American Company appeared.

After a series of hearings the Securities & Exchange Commission ordered that such divestiture occur not later than January 1, 1952 unless plans were then in process of completion which would effect some other disposition of the Washington Company. Just prior to the deadline, the American Company filed a plan for another sale of the Washington Company to the Public Utility Districts and to an Idaho Corporation not yet formed. It developed that no contract of sale had been entered into between the proposed parties and that the Idaho corporation, while non-profit in character, would in effect be another holding company for the operating property. We felt compelled to resist this plan and made appropriate representation to the Securities & Exchange Commission. An order was entered setting the American plan for sale and, the plan for divestiture by distribution down for hearing.

The Public Utility Districts thereupon sought a restraining order in the U.S. Circuit Court of Appeals for the Ninth Circuit against holding the hearing. We joined the Securities Commission in seeking to have the restraining order dissolved and the petition for review of the Commission's action dismissed. The Court agreed with this position, dismissed the petition for review and dissolved the restraining order. The Commission thereupon ordered the hearing. The American Company then filed a plan for distribution in accordance with our initial suggestion to the Commission. That distribution was finally accomplished on August 21, 1952 and the Washington Company is now an independent operating utility, without holding company control of any kind. The purposes of the 1951 statute have been rendered effective. We entered the litigation at the Federal administrative level in order to avoid long, difficult and costly litigation in our own State Courts, and in the several United States Courts.

The Clinger Case

Two cases arose in Madison County which are of fundamental importance to the conduct of the public trust imposed on the administration of the public school lands. The Land Board offered a section of land in that county for sale at public auction to the highest bidder. The land was offered in two parcels. On one parcel a competing bidder was successful and on the other the person who had applied to have the land offered for sale was successful. The competition at the auction was brisk, and the person who applied to have the land offered for sale dishonored her check for the down payment on the next business

Bill Passed Banning Public Utility Sales to Governmental Agencies

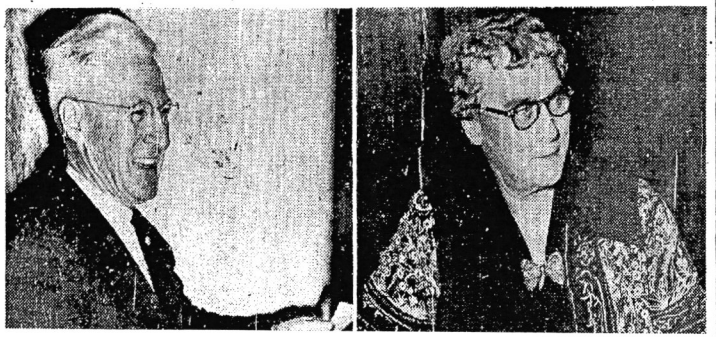
Quick Action On Measure Draws Protest

Proponents Declare Law May Prevent Loss of Revenue

By JOHN CORLETT
Statesman Political Editor

The Idaho legislature suspended rules Monday and passed a bill through both houses which would bar the sale of utility properties in Idaho to any governmental agency or instrumentality outside the Gem state.

Little Sketches of Idaho Legislators



Trading Stamp Issue Argued Before Solons

Friends and Enemies Of Premium Plan Appear at Hearing

Friends and foes of the little "green" stamps, which housewives redeem for premiums, invaded the Idaho legislature Monday to present their pro and con arguments befbre a house state affairs subcommittee.

A bill has been introduced in the house which would outlaw the use of the so-called trading stamp program and some of them even volunteered petitions."

Church said that if "we had a week or two more between 50,000 and 75,000 signatures could be obtained to retain the stamps," and added:

"If the stamp program is not sound or is a bad practice, it will die of its own weight."

Church presented the replies from the merchants to the subcommittee.

Boice told the committee that he used green stamps and said "these fellows selling the green stamps are making 54 per cent profit."

Newhouse said that a careful check in his store showed that 74 per cent of the stamps were being used. He said they represented a cash discount to his customer and that the prices were not raised "one cent."

Termed "Vicious"

Eastman said he was jealous should license the firms which sell the stamps."

He got no direct answer to that question.

Eastman said that "if some of the profits going out of the state could be returned he would be in favor of it."

Later Rep. Dave Doane (R-Ada) said he believed that a bill now before the legislature would aid in procuring income tax on income made in Idaho by oue-of-state

UTAHAN TO SPEAK

WEISER (Special) — Weiser Chamber of Commerce members will hear Gus Backman, Salt Lake City. Chamber secretary, as principal speaker at their annual meeting Jan. 31 at 7:30 o'clock. Backman will discuss Utah travel exploitation. Weiser Chamber President Jack Bennett will preside at the meeting.

Twin Falls Woman Killed in Headon Automobile Crash

JEROME (AP)—Mrs. Ben Aspey, 48, Twin Falls, was killed instantly and two men injured in a headon auto accident on U. S. highway 93 south of here Monday.

The accident occurred shortly after 9 a. m. Mrs. Aspey was riding in a car driven by her husband. Donal Hine, Filer, was driver of the other car. Aspey, a prominent Twin Falls real estate broker, and Hine are in the Magic Valley Memorial hospital at Twin Falls. Attendants said their condition was "just fair."

State Patrolman Gene Hagler is investigating the crash.

The death was the second for Magic valley in 1951, both occur-

Bill Pass

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By JOHN CORLETT
Statesman Political Editor

The Idaho legislature suspended rules Monday and passed a bill through both houses which would bar the sale of utility properties in Idaho to any governmental agency or instrumentality outside the Gem state.

After less than 15 minutes debate, the house approved the measure by a whopping vote of 47 to 7. The measure, rushed to the senate, was passed there 37 to 3, with hardly more than 10 minutes of discussion. Democrats cast the only no votes.

The measure's supporters justified the suspension of the rules to get immediate action on the ground that an emergency situation existed which might cost the state of Idaho close to $500,000 in revenue. They explained that negotiations were now going on in New York for the sale of the Washington Water Power company's north Idaho utility properties to a group of public utility districts in nearby Washington state. The tax-exempt status of the PUD's, said the bill's proponents, would prove costly to Idaho.

Argue Against Haste

The opponents argued against the haste. Some of the north Idaho house members contended they were not being given adequate time to get the viewpoint of their constituents.

Earlier, the senate approved by a 35 to 0 vote a measure which appropriates $1,000,000 from the general fund to the governor for emergency civil defense purposes. The measure carries restrictions which would prevent the governor from using any of the funds unless the United States and Canada were confronted by an enemy attack.

The senate, also by a 35-0 vote, approved a bill that would provide a simpler system whereby members of the armed forces could vote in national, state and county elections in their absence from Idaho.

Caucuses Held

The public utility measure came up in the house after a noon hour recess and after Democratic and Republican members held separate caucuses. Suspension of the rules was okehed by a 51 to 3 vote.

It immediately became obvious that Rep. Jesse Vetter, the veteran Democrat from Kootenai, was prepared to scrap. Twice he objected to moves for unanimous consent to have the clerk stop reading the lengthy bill and have it entered on the record as read in full. And so the house sat quietly as Chief Clerk C. A. Bottolfsen droned through the seven closely-typed pages.

Then Rep. David Doane (Ada), assistant Republican floor leader, opened the debate for the bill's supporters. He explained that the major purpose was to protect power users of Idaho, particularly those in North Idaho, "to be sure that the electric utility properties be owned in Idaho and not escape taxation."

He told the house that there

Then Rep. David Doane (Ada), assistant Republican floor leader, opened the debate for the bill's supporters. He explained that the major purpose was to protect power users of Idaho, particularly those in North Idaho, "to be sure that the electric utility properties be owned in Idaho and not escape taxation."

He told the house that there was now pending negotiations between the Washington Water Power company and the PUD group from Washington for the sale of the former's north Idaho properties.

"How soon they are going through with the deal, we don't know," said Doane, "but it is essential that this bill be passed right away."

Leads Opposition

Vetter, leading off for the opposition, said "I don't see any necessity for rushing this kind of legislation through." He said the measure was put on his desk only this morning.

"It is so complicated, I've written my attorney," he added. "All I know about this bill came from the attorney for the Idaho Power company and I'll tell you what I told him to his face—I don't trust him."

Standing at his desk with thumbs hooked into his lower vest pockets, Vetter turned his attention to the PUD's. These cooperative groups, he said, were owned by farmers "and I'd rather trust the farmers—I'm satisfied they will not exploit the people."

"Something," said Vetter, his high-pitched voice rising higher, smells mighty strong to me that they're trying to get this through so quick."

Rep. Joseph Kaschmitter (D-Idaho) took up for the opposition.

"Many of the things that Mr. Vetter has said, I am in full accord," he said. "I ask—why the haste? I, for my part, want to know a little more before I vote in favor of it."

Rep. William Pyle (R-Gooding) directed a question at Vetter.

"I, too, am a farmer," he said. "I ask you will the farmers who are trying to buy these utilities have integrity enough to pay their taxes in Idaho?"

"I'm willing to trust 'em," was Vetter's reply.

Rep. William C. Smith (D-Shoshone) echoed Kaschmitter's words.

Rep. Walter Dinnison (R-Clearwater), reminding that he was a north Idahoan, said he regarded haste as essential in the present matter.

Closing debate, Doane emphasized that his interest in the bill was dictated by his conviction that the measure was to the interest of the state. He said that if the north Idaho properties were sold before the legislature could stop it, the state would lose at least $460,000 in revenues.

Those voting against the bill in the house—all Democrats—were Reps. W. E. Drevlow (Lewis), Sam Eastman (Kootenai), Kaschmitter (Idaho), W. O. Payton (Valley), Smith (Shoshone) and Marvin G. Vandenberg (Boundary), and Vetter.

In the senate, Sen. E. J. Soel-

berg (R-Butte), the majority floor leader, launched the debate by saying there was "great urgency" for passage of the measure because of negotiations now in progress in New York City.

"If the sale is made prior to passage of this bill, Idaho would stand to lose heavily in taxes. If the Washington Water Power company were transferred to the tax-exempt PUDs in Washington, the state of Idaho would stand to lose a lot of money."

Sen. Clark Hamilton (D-Washington) was the only opponent to take the floor against the bill in the senate. He said he opposed the hurry in passing the bill.

At another point he said he thought "it was a vicious bill, a bad bill."

Later, referring to public-owned utilities, he said:

"I feel they ought to be brought back on the tax rolls. I think all cooperatives should pay taxes."

Sen. William J. Costley (D-Lewis) said, "If we want PUDs in Idaho it should be for this body and the one across the hall (house) to set up the "plan." He expressed fear that failure to pass the measure might mean that PUDs would be forced on Idaho. Senator Costley said he was served by REA and private power company, adding that REA rates were higher than Washington Water Power's, "but there's a reason for it."

Rejections Noted

Sen. William C. Moore (R-Latah) noted that Spokane county voters in Washington had twice rejected public utility districts and that Asotin county, Washington, which adjoins his home county, just last November rejected a PUD by a five-to-one vote.

"Why, if they don't care about PUD in nearby Washington state, should it be thrust upon us," Senator Moore demanded.

The three senate votes against the bill were cast by Sens. Hamilton (Washington), James L. Ingalls (Kootenai) and Clarence Phillips (Cassia).

During its morning and afternoon sessions, the house received eight bills, one of these, introduced by Rep. Frank Chalfant, (R-Ada) and Rep. Peter J. Ricks (R-Madison), would prevent the sale of beer in such establishments as grocery stores and any other place where youths under 20 are permitted to enter.

Six bills and a joint memorial were introduced in the senate.

Both the house and senate adjourned until 10 a. m. today.