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July 3, 2020

Brian Wonderlich
Office of the Governor
PO Box 83720
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RE: Idaho Coronavirus Relief Fund Concerns

Dear Brian,

As we have mentioned in recent conversations with you, our office has a number of legal concerns with the plan to substitute first responder and public safety employee salaries of local governments with the federal Coronavirus Relief Fund dollars. At a minimum, the divide between our respective interpretations of the U.S. Treasury FAQs evidences that they may not ultimately approve the program, at least in regard to the tax reduction conditions and the conclusion that the plan would constitute revenue replacement as prohibited by the FAQs.

In addition, as stated on page 7 of the Treasury FAQs, the purpose of the trickle-down approach for these funds is that the states are more easily equipped to distribute these funds to local governments. Specifically:

"This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes."

The State's plan does not appear to meet this requirement for equitable treatment between local governments. The plan would disproportionality affect rural counties with lower new construction rolls. While some local governments do not need the 3% increase this year, many do. This further creates an unequitable situation for property taxpayers in those counties which need the increases to provide their services year after year.

Simply replacing the revenues for first responders and public safety officers does not help local governments meet the need for increased costs related to employee healthcare, cost of living increases, jails, courts, drivers licensing, DMV and all of the other services that have seen increased costs due to Covid-19 (i.e. technology needs, FFCRA leave, etc.).

The State's plan also does not appear to meet the requirements set forth in the Treasury FAQs for passing assistance along to individuals or placing restrictions on the funds. Under the 5th FAQ down on page 8 of the June 24, 2020 guidance, the Treasury states that any assistance programs established from the Fund must be "structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency . . . For example, a per capita payment to residents of a particular jurisdiction without an assessment of individual need would not be an appropriate use of payments from the Fund." Read in conjunction with the text of the CARES Act, the above and other FAQs, the State's plan does not appear to meet the intent of the federal funds. We cannot find any other state which has imposed limitations on these funds which extend beyond the audit and reporting requirements in the Act.

Recognizing that these funds should not end up as a windfall to a local entity, and consistent with this FAQ, consideration should be given to only covering expenses that actually exceed budgeted amounts or that required taking funds from other lines to cover COVID personnel costs.

Our Office is not alone in our interpretation of the Treasury FAQ's and other legal concerns. Including our Office, we have e-mail confirmation from 24 other county prosecutors who agree that this plan does not appear to meet legal requirements, and the below counties agreed to be added to this letter as agreeing with the above legal concerns:

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|----------------------|----------------------|
| - Clearwater County; | - Adams County; |
| - Franklin County; | - Caribou County; |
| - Gooding County; | - Bonner County; |
| - Idaho County; | - Owyhee County; |
| - Kootenai County | - Jefferson County; |
| - Lemhi County; | - Twin Falls County; |
| - Lincoln County; | - Camas County; |
| - Blaine County; | - Jerome County. |

This includes offices in counties who do not need to take the 3% increase this upcoming year and already voiced that position.

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We also understand that the County Treasurer's Association has taken the position to oppose this proposal – listing their own reasons, and that other County officials are expressing concerns as well.

Considering the number of prosecutor offices that have reviewed this plan and expressed legal concerns with it, we would implore that your office request a legal opinion from the Treasury Department and the Idaho Attorney General's Office before proceeding further. We need to resolve the legal concerns so our clients can make informed and intelligent policy decisions on whether to participate in this plan. To facilitate this, we suggest that the July 17 deadline be pushed back to at least July 24.

Thank you for your time in reviewing this, for the countless hours we are sure you have put into this public emergency, and for taking the time to visit with us. We look forward to continuing our discussions.

Sincerely,



William W. Thompson, Jr.
Prosecuting Attorney



Bradley J. Rudley
Chief Civil Deputy Prosecuting Attorney

cc: Seth Grigg, Idaho Association of Counties
Lawrence Wasden, Idaho Attorney General
Board of County Commissioners