



Office of Performance Evaluations Idaho State Legislature

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License Plate Design Royalties Paid to the Idaho Heritage Trust

In January 1997 the Joint Legislative Oversight Committee requested an evaluative review of the fee paid to the Idaho Heritage Trust (Trust) for license plates using the Centennial plate design. We focused our review on three questions:

- What is the current legal authority for assessing and collecting the fee?
- What has been legislative intent regarding the establishment of the fee and the use of the proceeds?
- How much money has been collected under this authority, and has it been used consistent with legislative intent?

To answer these questions, we:

- Reviewed Idaho Code and the legislative history of relevant code sections;
- Interviewed Transportation Department personnel and reviewed department data;
- Interviewed the executive director of the Trust and reviewed financial information provided by the Trust's accountant;
- Consulted with the Office of the Attorney General on questions of legal interpretation.

We conclude that the fee serves both as a royalty payment to the owners of the registered license plate design to compensate them for the state's

use of the centennial design, and as the provision of public funds to the Trust to fund preservation projects. We found that some terms of the royalty agreement may not have been interpreted in accordance with the intent of both parties, other terms are not stated in code, and one term has been only partially fulfilled by the Trust. Also, some statutory restrictions on the Trust may not be enforceable. We recommend that the Legislature designate a state agency to administer and monitor the royalty agreement, and that the agreement be placed in writing.

Terms of Agreement Unclear

Idaho's standard motor vehicle license plate design consists of a light blue snowcapped mountain range with dark blue pine trees on a white background with a burgundy sky. The Idaho Centennial Commission adopted this design in September 1986 for use on a special license plate. Proceeds from the sale of the plate helped fund 1990 centennial celebration activities. The Legislature adopted the design as the standard license design for all motor vehicles effective January 1992.

The Idaho Centennial Foundation, an organization created to assist the Commission with fundraising efforts, trademarked the design in October 1987. This design is now the trademarked property of

This report was completed at the request of the Joint Legislative Oversight Committee under the authority of Idaho Code § 67-457 through § 67-464. Questions about the report may be directed to Tom Gostas, Office of Performance Evaluations, P.O. Box 83720, Boise, ID 83720-0055, or phone (208) 334-3880.

Figure 1: Key Events in License Plate Design Development and Use

September 1986	Idaho Centennial Commission, a state agency created by executive order in July 1982 and by statute in February 1988, adopted plate design developed by Commission with assistance of an advertising agency.
January 1987	Transportation Department began sale of Centennial license plate to raise funds for Idaho's 1990 centennial celebration.
October 1987	License plate design trademarked by Centennial Foundation, a nonprofit entity incorporated in October 1985 to plan and raise funds for centennial events.
March 1988	Legislature amended Idaho Code § 49-443 to adopt centennial design as the standard license plate design beginning January 1992.
June 1988	Idaho Heritage Trust incorporated, according to guidelines determined by Centennial Commission.
April 1990	Legislature amended Idaho Code § 49-450 to pay a royalty fee of \$0.50 per license plate for the design, beginning January 1992.
May 1991	Centennial Foundation assigned design trademark to Trust.

Source: Centennial Commission records and Idaho Code.

the Idaho Heritage Trust, a nonprofit organization formed in 1988 under the direction of the Centennial Commission to promote preservation of heritage resources. As Figure 1 illustrates, the Trust acquired ownership of the design from the Centennial Foundation in May 1991. We did not review the circumstances surrounding the transfer of the license plate design to the Foundation and the Trust.

Idaho Code § 49-450 requires the department to collect a plate manufacturing fee for each license plate used to register a motor vehicle. The 1990 Legislature raised the plate manufacturing fee from \$2.50 to \$3 effective January 1992, and provided that “the fifty cents (\$.50) per plate fee designated to the Idaho heritage trust for the use of the copyrighted design” would be paid from this amount. The payment is also required under Idaho Code § 67-7602B.¹ The fee is paid only when

new plates are purchased, and plates are valid for seven years.

It appears that the intent of the agreement was that the Trust would receive \$0.50 for each license plate that uses the trademarked design. However, we found that:

- **The Transportation Department collects the fee on license plates that do not use the centennial design and, in one case, has not compensated the Idaho Heritage Trust for plates that use the design.**

Since the fall of 1995, department staff have believed code requires them to collect the \$3 fee on all plates, including those that do not use the design, such as the wildlife, timber, purple heart, veterans, and national guard designs.² In fiscal year 1996 collections for plates that do not use the design totaled \$20,400, approximately \$3,400 of which was intended by code to cover the trade-

¹ Chapter 76 of Title 67 became void with the sunset of its enabling act on July 3, 1996. According to the compiler of Idaho Code, §§ 67-7602A (defining a “heritage resource”) and 67-7602B remain in effect because they were added through a later act.

² The department will also collect the \$0.50 on Old-timer and Classic plates beginning January 1998, pursuant to legislation passed during the 1997 legislative session.

mark fee.³ Rather than going to the Trust, this amount was transferred to the highway distribution account. According to a department staff person, this collection and transfer is consistent with Idaho Code and the department's policy that special plate programs are a source of additional revenue for Idaho's highways.⁴

At the same time, the department has interpreted Idaho Code to exempt one group from paying the \$3 plate manufacturing fee.⁵ Disabled veterans are not charged for "the registration or reregistration of a motor vehicle."⁶ Therefore, the department has not compensated the Trust for the use of the centennial design on this plate. Although the financial effect is negligible, this practice indicates that payment of the royalty has not always corresponded to the use of the design on the license plates.

We determined that the department has had to interpret Idaho Code to administer the fee, in part, because:

- **Idaho Code does not address all terms of the royalty agreement, and there is no other written agreement.**

This has also left other terms of the royalty agreement open to question. For example, Idaho Code does not mention other state uses of the trademarked design. While past practice of the Centennial Foundation and Centennial Commission was to allow non-commercial use of the design without charge, the executive director of the Trust told us that the Trust allows state agencies to use the design, but in return for the state's payment of the \$0.50 plate fee. The executive director was

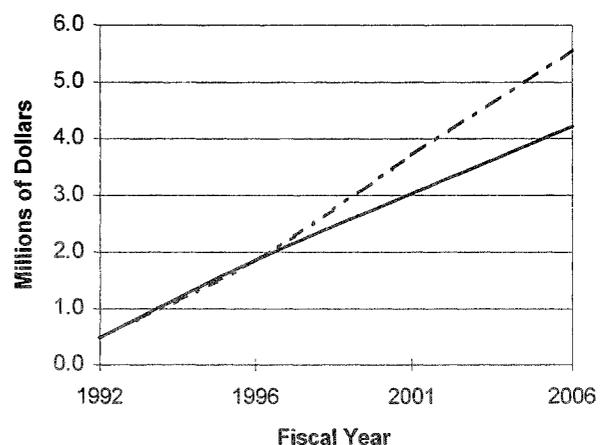
aware of other state uses including: the background on warrants issued by the State Controller; Transportation Department letterhead, road signs, and greeting cards; and electronic benefit transfer cards in the Department of Health and Welfare. Staff in these agencies were aware of the need to obtain the Trust's permission to use the design because of their knowledge of centennial events, rather than reference to a written agreement.

There is no written understanding on other terms of the agreement such as:

- A state agency to manage the agreement;
- A mechanism to review or adjust the level of the fee; and
- The duration of the transfer.

Through March 1997 the Trust had received a total of \$2.04 million from the fee. Assuming average annual collections, we estimate total fee revenue through fiscal year 2006 could reach \$5.56 million, as Figure 2 illustrates.

Figure 2: Projected Total Funds Going to Idaho Heritage Trust From License Plate Fee



— Assuming annual revenue at 1996 level (\$235,000/year)

- - - Assuming annual revenue at average of past collections (\$371,000/year)

Source: Idaho Transportation Department and Idaho Heritage Trust data.

³ There were no sales of timber or veteran plates during this period.

⁴ IDAHO CODE § 49-450 (1996).

⁵ IDAHO CODE 49-415A (1996) also exempts medal of honor plates from the plate manufacturing fee. However, these plates do not use the centennial design.

⁶ IDAHO CODE § 49-403 (1996).

Fee Treated as Public Funding

Although Idaho Code refers to the \$0.50 fee as a royalty payment, we found:

- **Idaho Code’s restrictions on the Idaho Heritage Trust’s use of the license plate fee revenue are similar to those applied to appropriations or grants, rather than a royalty payment.**

This treatment of the fee appears consistent with the early development of the Trust. Centennial Commission documents dated in 1988 showed that several funding sources for the Trust were considered, including various taxes. Commission officials at the time identified the license plate fee as a feasible source of public funding.

A royalty is a payment in compensation for the use of property. Idaho Code, however, specifies the account into which the funds will be deposited and the use to which the funds are restricted. This is similar to the treatment of other special license plate programs, as Figure 3 shows.

Motor vehicle owners who elect to purchase license plates with an alternative design know that part of the additional fee they pay supports the state program sponsored on the plate. In contrast, we found that:

- **The fee paid to the Idaho Heritage Trust differs from special license plate programs because it is involuntary.**

Figure 3: Idaho Code Restrictions on Use of Special Plate Revenue and Idaho Heritage Trust Royalties

<u>Plate Design</u>	<u>Agency Receiving Funds</u>	<u>Specified Use</u>	<u>Idaho Code Authorization</u>
Wildlife	Fish and game set-aside account	Nongame management and protection program	§ 49-417
Timber	Department of Lands fund	Reforestation activities, educational efforts related to reforestation and conservation	§ 49-417A
Collegiate	Public college or university sponsored on plate	Scholarship funds for Idaho residents, or match to non-state funds for academic programs	1997 Idaho Sess. Laws, Ch. 277 (effective 7/1/97)
Standard Plate	Idaho Heritage Trust	Funds to be matched with equal funds from other sources for funding projects designed to preserve Idaho’s historic resources.	§ 49-450
		Funds to be deposited to trust fund. Only interest earned to be expended, with the trust remaining as a permanent endowment in perpetuity. Trust to require project sponsors to match the funds granted for each project.	§ 67-7602B

Source: Idaho Code and Session Law.

Motor vehicle owners are not notified that part of the fee they pay to purchase standard license plates goes to the Trust to support heritage preservation projects, and the receipts they receive do not reflect this transfer. A vehicle owner who chooses not to support heritage preservation cannot refuse the fee.

On the other hand, the Trust does not receive the proceeds from the sale or renewal of the special Centennial plate. From 1987 to 1991, voluntary contributions to historically related activities were derived from the sale of the special Centennial plate. Commencing with its introduction in January 1987, the special plate's purchase fee of \$25 and renewal fee of \$10 were deposited to the Centennial Commission account to fund centennial activities. Beginning in January 1991, one year before the Centennial design became the standard plate design, the Legislature directed the revenues to the highway distribution account, rather than the now dissolved Centennial Commission or its successor, the Trust. In calendar year 1996, approximately 24,600 vehicles were registered with special Centennial license plates, generating approximately \$360,000 in revenue for the highway distribution account.⁷

Restrictions applied to a private entity

Because the Trust is a private corporation, we questioned the enforceability of the code's restrictions on the Trust's use of fee revenue. After consulting with the Office of the Attorney General, we found:

- **The statutory restrictions on Idaho Heritage Trust's use of license plate fee revenue may not be enforceable.**

The Legislature cannot restrict how a properly constituted private entity spends its funds. The

Trust was incorporated in June 1988 under the Idaho Nonprofit Corporation Act as a nonprofit entity. As a private corporation, the Trust does not fall under the direction of the Legislature.

Although the restrictions are unenforceable as statutory language, the attorney general's review noted that the restrictions could be interpreted as conditions for the state's use of the design on the license plate. Under this interpretation, the actions of the state and the Trust have created a contract obligation. The state has contracted to use the Trust's plate design and pay the Trust for the use of the trademark, on the condition that the Trust use the funds in the prescribed manner. The conditions could be enforced in court under contract law, if the court agreed with the state's interpretation of the parties' obligations.

Compliance with legislative intent

While enforcement mechanisms remain unclear, the restrictions in code on the Trust's use of the revenue provide a statement of legislative intent. We found:

- **The Idaho Heritage Trust has not fully met the legislative intent expressed in Idaho Code.**

As noted above, Idaho Code § 49-450 was amended in 1990 to require that "funds designated to the Idaho Heritage Trust . . . be matched with equal funds from other sources for funding projects designed to preserve Idaho's historic resources." January 1991 correspondence from the chairman of the Centennial Commission stated his understanding that "the legislature will require that these funds be matched by private contributions." The executive director of the Trust told us the current Board of Trustees also interprets this statutory language to require a match of the revenue generated from the license plate fee.

However, from its inception through December 1996, the Trust received \$460,000 more in public

⁷ The 1992 Legislature raised the renewal fee to \$15 (1992 Sess. Laws Ch. 261).

funding than it did in private contributions. As shown in Table 1, the Trust received a total of \$1.99 million in fee revenue, but raised a total of \$1.53 million in private funds for the endowment and Trust operations. During the same time period, the endowment earned gross investment income totaling \$548,000.

Table 1: Trust Revenues Through December 1996

<u>Fiscal Year</u>	<u>License Plate Revenues</u>	<u>Total Private Collections</u>
1989	\$ 0	\$ 100,000
1990	0	22,194
1991	0	297,794
1992	0	432,654
1993	1,106,727	142,715
1994	268,709	108,063
1995	243,766	370,302
1996	235,207	47,190
1997*	133,175	13,098
Grand Total	\$1,987,583	\$1,534,009

Note: Privately matched project grants approved through fiscal year 1996 totaled approximately \$625,000.

* Through December 1996.

Source: Idaho Heritage Trust financial records, and 1996 annual report.

The executive director of the Trust acknowledged that public funding to the endowment has not been fully matched. The Board of Trustees is planning a fund-raising drive and expects to hire staff to lead those efforts in May 1997.

The Chairman of the Board of Trustees pointed out that the Trust has fully matched public funding if private contributions that match project grants are included. Idaho Code § 67-7602B, added in 1992, requires that no more than half of an historic preservation grant come from the Trust's endowment fund investment earnings.

The Trust's annual reports state that grantees are required to match Trust funds, and that lack of adequate match funds would disqualify an application. The Trust's annual reports have listed the projects supported by the Trust, and the amount of support provided. The Trust's fiscal year 1996 annual report stated that the board had approved approximately \$625,000 in project grants over the life of the Trust.⁸ We did not examine the individual grants beyond review of the information provided in the annual reports.

Oversight Mechanisms Unclear

The executive director characterized the Trust as a "quasi-state" entity, and stated that the Trust management welcomes state oversight. While under the current arrangement Trust management has orally agreed to abide by the statutory restrictions on its operations and use of public funding, we found:

- **There is no formal review process to ensure that the activities of the Idaho Heritage Trust meet legislative intent.**

In part, the legal status of the Trust makes appropriate mechanisms for oversight difficult to identify. The Trust maintains close ties to the state that reflect the public purpose of the organization and its "quasi-state" nature:

- The Trust was conceived by the Centennial Commission, a state agency, and its organization was designed with the assistance of a consulting company under contract with the Commission.
- The Trust's articles of incorporation state one of the organization's purposes is "to maintain a close and continuous working relationship with the officials of the state of Idaho." Two other listed purposes are activities typically carried out by government: "to protect and

⁸ Not all grants have been fully disbursed.

interpret a legacy of important historical and natural resources in the state,” and “to advance the appreciation of Idaho’s historic and natural heritage through educational and cultural programs, protection and restoration of resources, interpretation and/or development.”

- Idaho Code § 67-7602B directs the Trust’s operations as though it were a state agency. It requires the Trust to evaluate and accept proposals from the public requesting funds for heritage preservation projects and provides specific directions on management of the endowment trust. The Trust’s executive director told us the Trust complies with this direction.
- The Public Employee Retirement System of Idaho (PERSI) Board accepted the Trust as an eligible employer in May 1990, and the Trust’s executive director currently contributes to PERSI. The Office of the Attorney General concluded in an April 1997 opinion that the Trust falls within the definition of a “governmental entity” and therefore qualifies as an employer eligible to participate in PERSI.⁹
- The Office of the Attorney General was hired as the Trust’s legal counsel in August 1996, and represents the Trust in ongoing cases over enforcement of its trademarked license plate design.

Despite these ties, as a nonprofit corporation the Trust is not subject to the typical processes of public review for accountability in the use of public funds. For example, the Trust does not participate in the appropriation process. Also, it is not legally required to undergo legislative audit of its financial transactions or other department review to determine whether it has met the conditions stated in code. To date, the Trust has voluntarily undergone an annual audit by a private accounting firm and distributed annual reports to members of the Legislature. However, the annual reports do

not summarize financial transactions in a manner that allows readers to compare public and private contribution amounts or determine whether the conditions in code have been met.

Options to Improve Accountability

To date, the Legislature has chosen to continue state use of the trademarked centennial license plate design and meet the accompanying obligation to compensate the Trust for this use. Bills to discontinue use of the centennial design were proposed in committee during the 1996 legislative session, but were rejected or withdrawn.

However, the state and the trust have not formalized their agreement for the use of the license plate design, and there is no state entity responsible for administering the agreement or representing the state’s interests in it. As a result, terms such as the application of the royalty to all plates, the extent to which the state may use the design, and the obligations of the Trust regarding use of the funds, remain open to interpretation. There is no formal assurance that current or future practices surrounding the fee reflect the intent of both parties. In consideration of the public’s need for accountability for public funding, and to ensure equitable treatment of both parties in the agreement:

We recommend that the Legislature designate a state agency to be responsible for administering and monitoring the royalty agreement with the Idaho Heritage Trust, and that the terms of the agreement be placed in writing.

Development of a written contract could identify areas where practices of the Transportation Department or Trust need adjustment, and provide an explicit record to aid future oversight.

The Legislature could consider at least two options for an agreement to use the centennial plate design. The first would continue the present

⁹ Definition at IDAHO CODE § 59-1302(15) (1996).

agreement to pay a fee for each plate using the design. The contract could:

- Establish the conditions under which the state will continue to use and pay for the license plate design, such as the Trust's continued support of heritage preservation projects and match of endowment revenue and grants with private funds;
- Specify whether the state is obligated to pay for the design on all plates;
- Ensure free use of the design by state agencies for other projects;
- Set the duration of the agreement;
- Recognize that the royalty is a provision of public funding and establish an appropriate

review mechanism with enforcement provisions.

Second, the Legislature could consider reinstating the Centennial plate as the means of funding the Trust in return for the Trust's financial support of heritage projects and its permission to use the centennial design on standard license plates without charge. This option would allow the Trust to modify the fees or design associated with the Centennial plate in accordance with fundraising needs, and restore the voluntary nature of the public funding. In fiscal year 1996 the Trust would have received approximately \$360,000 under this arrangement, assuming no change in fees, compared to \$235,000 under the current agreement.

Consistent with Idaho Code § 67-461(2), the Idaho Transportation Department, the Governor, and the Idaho Heritage Trust were given the opportunity to review this report in advance and respond in writing. The Governor and the Transportation Department did not provide written responses. Below we have summarized the response of the Idaho Heritage Trust. Copies of complete responses to the review are available from the Office of Performance Evaluations. We appreciate the cooperation we received from the Idaho Transportation Department and the Idaho Heritage Trust.

Summary of Responses to the Evaluative Review

On behalf of the Idaho Heritage Trust, the Chairman of the Board of Trustees stated:

“As indicated in the report, the genesis of the Idaho Heritage Trust is somewhat unusual, since it was an outgrowth of the Lasting Legacy Committee of the Idaho Centennial Commission. Although formed as a non-profit corporation, it was recognized by statute. We recognize our special relationship with the Legislature and the State of Idaho, as our founder and nurturer.

“The Idaho Heritage Trust has fully met the legislative intent as expressed in the Idaho Code, § 49-[4]50. The Code, as an indication of legislative intent, requires that ‘funds designated

to the Idaho Heritage Trust ... be matched with equal funds from other sources for funding projects designed to preserve Idaho's heritage resources.’ The Trust has done that. Table 1 of the report should be modified more accurately to reflect both the contributions made directly into the Trust, as well as those contributions that directly matched projects funded by the Trust....

“The Trust does provide annual reports that summarizes [sic] all transactions, audited by an outside accounting firm, in accordance with generally accepted accounting principles for charitable organizations.... Any recommendations to enhance such supplemental information would be appreciated.”