



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 9, 2017

The Honorable Fred Wood
Idaho State Representative
Statehouse
VIA HAND DELIVERY

Re: Idaho Code § 67-1808

This letter is in response to your recent inquiry of this office regarding Idaho Code § 67-1808. Specifically, you inquire as to which are duties and which are powers within that section. Idaho Code §67-1808 sets forth:

67-1808. POWERS AND DUTIES OF THE COMMITTEE. The committee shall have the following powers and duties:

- (1) To meet not less than two (2) times each year;
- (2) To establish rules for governance and operation of committee proceedings;
- (3) To request applications for funding from the Idaho millennium income fund;
- (4) To meet to hear testimony and to consider applications for funding from the Idaho millennium income fund;
- (5) To evaluate the actual and potential success of programs funded with moneys from the Idaho millennium income fund; and
- (6) To present recommendations annually to the legislature for the use of the moneys in the Idaho millennium income fund.

This provision of the code mixes powers and duties together, but it appears that certain of the responsibilities of the committee are discretionary, others are mandatory, and some are mixed. For example, it appears that paragraphs (1) & (6) are duties of the committee because it requires that the committee meet at least twice per year (1) and to make an annual recommendation to the legislature for the use of the money in the Millennium Income Fund (6). But paragraphs (3), (4), & (5) are discretionary powers of the committee because the Committee in fulfilling its obligation to make a recommendation to the legislature could choose to recommend that no expenditure be made, or that expenditures not provided for in paragraphs 3-5 be made. The requirement under paragraph (6) requires that the Committee make a recommendation on the use of the funds but that duty is not limited to solely the

Representative Wood
March 9, 2017
Page 2 of 2

power of the committee to hear and evaluate requests for funding through the committee. Paragraph (2) is both a power and duty because it gives the Committee the power to govern itself, but requires it to have rules of proceedings under which it operates.

The discretionary paragraphs appear to be a guide for the members to comply with the duty to recommend, but the Committee could alternately choose to not take any requests for a year and recommend no expenditures from the fund to the legislature.

It is worth noting that to avoid this confusion in future enactments, powers and duties should be clearly delineated within the statute.

I hope that you find this letter helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'BRIAN KANE', with a long horizontal line extending to the right.

BRIAN KANE
Assistant Chief Deputy

BK/tjn