

## State Liability for Contracts

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### QUESTION PRESENTED

When is the state liable for a contract entered by a public or quasi-public entity?

#### I.

##### ***Contracts by State Officers and Agencies = LIABLE***

The state is liable for a contract if the state is a party to the contract. Examples of those who can obligate the state on a contract include constitutional officers, the Legislature, and the Division of Purchasing on behalf of state agencies.

#### II.

##### ***Contracts by “Governmental Entities” = UNCLEAR***

Some public entities are defined in code as “governmental entities whose creation is authorized by the state much in the same manner as single purpose districts.” These entities include the Independent Living Council, I.C. § 56-1201; the Idaho Bureau of Educational Services for the Deaf and the Blind, I.C. § 33-3407; and the Idaho Digital Learning Academy, I.C. § 33-5502.

All are exempt from the provisions of the State Procurement Act, and the comparison to single purpose districts implies that the state is not liable, because the state isn’t liable for contracts by single purpose districts. But some language is ambiguous; for example, I.C. § 33-3407(4) defines the Idaho Bureau of Educational Services for the Deaf and the Blind as a

“state department” for certain purposes, including risk management and group insurance.

#### III.

##### ***Contracts by an Independent Public Body Corporate and Politic = NOT LIABLE***

An “independent public body corporate and politic” is a corporation created by law to serve a public purpose. Under Article VIII, Section 1 of the Idaho Constitution, the state has no responsibility for the “debts and liabilities” of these bodies. Examples of such bodies include the district boards of health under I.C. § 39-414, the State Insurance Fund under I.C. § 72-901, and the Idaho Health Insurance Exchange under I.C. § 41-6104.

#### IV.

##### ***Contracts by an Agricultural or Similar Commission = NOT LIABLE (mostly)***

Agricultural or similar commissions housed in the Department of Self-Governing Agencies have statutes specifically exempting the state from liability for the commissions’ “acts or omissions.” The exceptions are the Bean Commission, the Beef Council, and the Horse Board.

The Hop Growers Commission and the Mint Commission, established in the Department of Agriculture, also lack a specific provision exempting the state.