

October 10, 2023

TO:

Weston S. Davis  
Nelson Hall Parry Tucker, PLLC  
490 Memorial Drive  
Idaho Falls, ID 83402

Roger Christensen  
Bonneville County Commissioner  
605 N. Capital Ave.  
Idaho Falls, ID 83402

Randy Neal  
Bonneville County Prosecuting Attorney  
605 N. Capital Ave.  
Idaho Falls, ID 83402

Jonathan Walker  
Bonneville County Commissioner  
605 N. Capital Ave.  
Idaho Falls, ID 83402

Penny Manning  
Bonneville County Clerk  
605 N. Capital Ave.  
Idaho Falls, ID 83402

Bryon Reed  
Bonneville County Commissioner  
605 N. Capital Ave.  
Idaho Falls, ID 83402

Craig Tibbitts  
Bonneville County Treasurer  
605 N. Capital Ave.  
Idaho Falls, ID 83402

RE: Improper plant facilities levy of School District 91

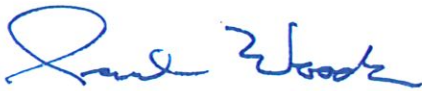
This letter is written under Idaho Code § 63-809(2) to inform you of an unauthorized levy fixed by the Idaho Falls School District #91. In March 2022, the School District submitted to its voters the question of a plant facilities levy of \$2,440,000 for a period of ten years, which voters approved. In May, 2023, the School District submitted the question of a second plant facilities levy to voters, which voters also approved in the amount of \$3,300,000 per year for a period of ten years. Both of these levies appear on the School District's 2023 L-2 Budget Certification Form. The School District's 2023 plant facility levy is not authorized by law.

In Idaho, school districts "may exercise only those powers granted to them by the state Constitution or the legislature." *Alpert v. Boise Water Corp.*, 118 Idaho 136 (Idaho 1990). In instances when a school district has an existing plant facilities levy, the legislature has authorized that school district to "again submit the question [of a levy] at the expiration of the period of such levy." Idaho Code § 33-804. There is no statutory authorization for a school district to ask its voters to approve a second plant facilities levy while a first levy is still in place. Because the legislature has not granted school districts this power, the 2023 plant facilities levy submitted by the Idaho Falls School District #91 is not authorized by law. For further analysis please see Attorney General Opinion 23-2, which the Tax Commission adopts as its own administrative construction of Idaho Code § 33-804.

This letter serves as an official notification to the Bonneville County Attorney of the levy fixed for a purpose not authorized by law. Idaho Code § 63-809(3) requires the County Attorney, upon receipt of this notification, to immediately bring suit in a court of proper jurisdiction against the Idaho Falls School District #91 Board of Trustees to set aside the 2023 plant facilities levy as illegal. The Tax Commission urges the County Attorney to act promptly so that the several statutory property tax

deadlines can be met in Bonneville County and throughout the State of Idaho.

Please let us know if you have any questions about this notification. I can be contacted at 208-334-7503 or by email at: [paul.woods@tax.idaho.gov](mailto:paul.woods@tax.idaho.gov). You may also wish to contact Alan Dornfest, who is our Property Tax Policy Bureau Chief, as his department works directly with counties and taxing districts on levy related issues. He can be reached at 208-334-7742 or by email at: [alan.dornfest@tax.idaho.gov](mailto:alan.dornfest@tax.idaho.gov).

A handwritten signature in blue ink, appearing to read "Paul Woods".

Paul Woods, Tax Commissioner  
Idaho State Tax Commission

Cc: George Brown, Property Tax Division Administrator  
Alan Dornfest, Property Tax Policy Bureau Chief  
Brett Jarvis, Deputy Attorney General  
Ben Seloske, Research Analyst, Principal