From: Diane Heirshberg <dbheirshberg@gmail.com>
Sent: Wednesday, April 8, 2020 10:06 PM
To: Matthew Dent; Sara Schmitz; Tim Callicrate
Subject: Dillon's Rule and General Improvement Districts; Questions for IVGID to Investigate

April 2, 2020

Dear IVGID Audit Committee, Ms. Schmitz and Messrs. Callicrate and Dent,

I was recently researching Dillon's Rule in connection with a request being made to Washoe County to combat the spread of the COVID-19 virus in Incline Village. I found that the Nevada State Legislature had passed a statute in 2015 to make the application of Dillon's Rule to County Commissioners less restrictive, but its application to other governmental entities, like General Improvement Districts, remains the same as it has been since its adoption in 1868. I am writing this email to bring Dillon's Rule and some complaints I have heard from local residents concerning IVGID accounting practices, to the attention of the audit committee. I sincerely recommend that IVGIB's audit committee seek legal counsel to investigate whether IVGID has the authority to make some of the questioned expenditures described below under Dillon's Rule.

Dillon's Rule was articulated by Iowa Supreme Court Chief Justice John Dillon in the case of Merriam v. Moody's Ex'rs, 25 Iowa 163, 170 in the year **1868,** as follows:

"In determining the question now made, it must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: **First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation—against the existence of the power.**"

In the 1860's Justice Dillon considered local governments to be more corrupt than state governments, and sought to limit the power of local officials to sign contracts. In his decisions and later in a treatise he wrote "Commentaries on the Law of Municipal Corporations, he established a legal principle that local jurisdictions had no inherent powers granted by the people; **all authority flowed from the state.**

I would also note that the same principal was determined several months earlier by the Nevada Supreme Court in tucker v. Mayor and Bd. Of Alderman, 4 Nev 20, 26 (1868) so is was not a novel rule for Nevada. I have attached a 2013 article discussing Dillon's Rule in Nevada provides a good discussion as to how Dillon's Rule works in Nevada as it applies to GIDs.

The 1937 Nevada case, Ronnow vs. City of Las Vegas, 57 Nev 332 (1937) also provides instructive language on Dillon's Rule:

"It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation—not simply convenient but indispensable. Any fair, reasonable substantial doubt concerning the existence of a power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. **Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void.**"

As you can see from the above discussion, Dillon's Rule is very strict as applied to GIDs. Therefore, I want to review the issues that I have heard raised so that you can be aware of and investigate the issues and seek written legal counsel as to what you can and cannot do as a GID.

The following expenditures by IVGID have been raised as not authorized. I know nothing about the allegations, but I wanted to communicate to the audit committee that these issues should be reviewed with your counsel if they are occurring or have occurred. I do not know if any of these issues are accurate, but I have heard the following complaints:

1. IVGID has allegedly donated merchandise which it purchased to local charities. This raises the question as to whether IVGID has the power to donate to charities under Dillon's Rule. I saw a specific statutory authorization for Washoe County to donate to charity but did not see a specific statutory authority for GIDs to do so. (I have not seen the authorizing documentation for IVGID specifically and do not know if there is authorizing language there.)
2. Donations are allegedly made by IVGID to local charities, and the Incline Village Visitor Bureau is only charged $1.00 per year for rent, even though the Visitor Bureau collects so much money from transient occupancy tax from the County. Again, this goes to the Dillon's Rule question as to whether IVGID has the power to donate to charities.
3. IVGID has allegedly been giving IVGID venue cards to employees to use at no cost. I noticed that NRS 318.185 gives the Board the power to fix employee compensation. I don't know if the IVGID venue cards are formally part of the compensation, and if so whether that would be sufficient support for this activity under Dillon's Rule.
4. IVGID has allegedly been sending employees on business trips and reimbursing business expenses, including travel. NRS 318.145, 318.210, 318.175, and 318.116 give authority to IVGID to take actions needed to fulfill its responsibilities, but in order to be sure which specific business expenses are necessary and authorized by

Dillon's Rule, you should review your practices and policies with an attorney. I strongly urge IVGID to prepare a written Business Expense Policy with an employee expense reimbursement form, all approved by your attorneys. This will allow employees to know which business expenses are necessary to operate, as the Business Expense Policy will limit hotels, food, travel, etc., and require the employees to submit a reimbursement form with attached original receipts; the Policy would also advise as to when employees can travel to conferences, trainings, etc. Allowing for per diem reimbursement would not suffice to justify the underlying "necessary" or "indispensable" purpose of the expense.

5. I was advised that instead of the standard expense reimbursement procedure described in 4 above, employees allegedly are or were given purchase cards, and there are no written directions on the use of purchase cards, and no advance or subsequent approval or disapproval of charges made on purchase cards. I cannot imagine that the attorney will approve the use of the purchase cards instead of formal expense reimbursement with approval by IVGID in advance of reimbursement payment to employees. I was advised of some of the described purposes for the purchase cards and would urge that some of the descriptions require scrutiny by your counsel for authorization under Dillon's Rule, including such things as "pizza for employees working non-stop", "Gung Ho" meeting at Brewforia, birthdays at MOFOS, lunch "after a tough week", food for a "going away party ". Lunch, dinner and food expenses really need to be reviewed by your lawyers as to whether they are necessary/indispensable to the performance of IVGID's powers, rather than merely convenient.

6. IVGID allegedly has parties for birthdays, and celebrations and brings in food for employees or gives gift certificates. Whether the Courts or practice considers these as necessary rather than convenient needs to be discussed with your counsel.

7. It has been challenged that IVGID employees like the former General Manager, take people out to dinner as business entertainment. In one case Mr. Pinkerton took out the IVGID lawyers to dinner and was reimbursed. Again, the attorneys should advise as to what authority IVGID has for such activities, and when it is appropriate if at all, under Dillon's Rule to take people out for dinner who are being paid to provide services to IVGID, or otherwise.

8. Employees are allegedly rewarded with "IVGID bucks". Again, this should be reviewed by an attorney, and this activity if approved should be documented in your formal procedures.

In my opinion, a lawyer with expertise in municipal law as applied specifically to General improvement Districts should give you written direction on:

1. What IVGID can and cannot do with respect to the types of expenditures described above, and others that you may have heard challenged;

2. Review and approve written policies that are drafted and a reimbursement form, and

3. Advise you what you need to do going backwards if Dillon's Rule has been violated.

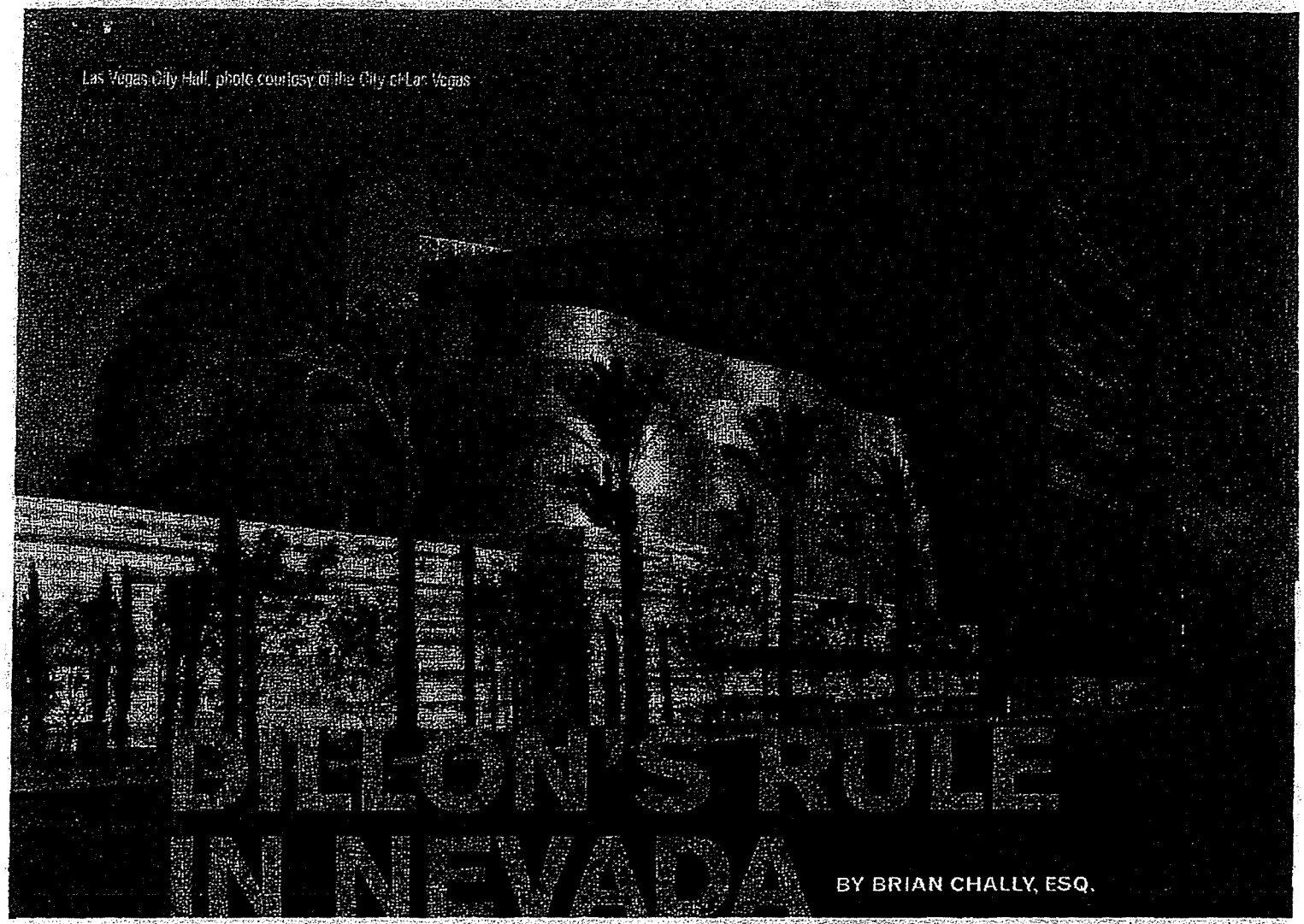
If your lawyers have already given advice on the above issues, hopefully the audit committee can get access to the writings they sent. If the legal advice was oral, I hope you will have the attorneys put it in writing to show IVGID's good faith reliance on the advice of counsel. And for going forward, I would hope that you get advice from your counsel. Dillon's Rule is very strict as applied to GIDs, and without the advice of lawyers I frankly do not see how you can be sure you are in compliance with the Rule.

Please know that I am personally very happy with IVGID. My husband and I purchased our home in Incline in 2013, in large part because of the wonderful amenities IVGID has built, the recreation center, Diamond Peak, the golf courses, and the trails. I am only writing this email because I want IVGID to know about these concerns that are being expressed by local residents, and to enable IVGID to review these concerns so as to be sure that Incline is operating in accordance with all applicable laws, including Dillon's Rule. I also know that sometimes it is hard to change past activities that employees view as benefits, and that sometimes employees forget that a GID or governmental entity is different than a

regular business. But for the protection of IVGID, I think that these concerns should be looked at promptly, and addressed by the audit committee as needed.

Very truly yours,

Diane L. Becker



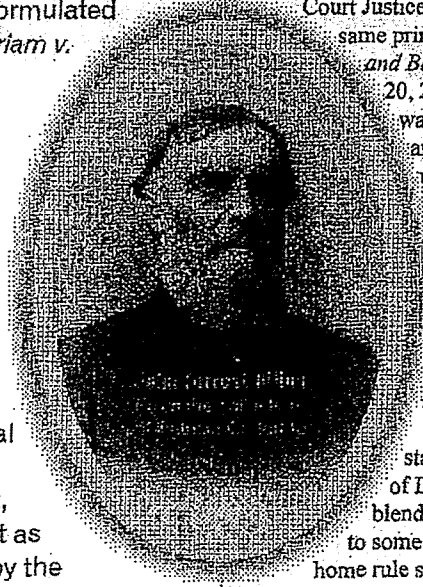
DILLON'S RULE IN NEVADA

BY BRIAN CHALLY, ESQ.

Iowa Supreme Court Justice John Forrest Dillon penned his way into a measure of legal fame when he formulated the principle known as Dillon's Rule, in *Merriam v. Moody's Ex'rs*, 25 Iowa 163, 170 (1868).

He wrote:

> In determining the question now made, it must be taken for settled law, that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation – against the existence of the power.



Five months earlier, Nevada Supreme Court Justice J. F. Lewis enunciated the same principle in *Tucker v. Mayor and Bd. of Alderman*, 4 Nev. 20, 26 (1868), noting that this was a "general proposition," and apparently so well understood that no citation to authority was necessary. Lewis, however, lacked the reverberation of the author of Treatise on the Law of Municipal Corporations, first published in 1872, and a seminal work on the subject until well into the 20th century.

Today, approximately 31 states follow a strict version of Dillon's Rule; nine others are blended, with the rule not applying to some local entities, and 10 are home rule states. Dillon's Rule has been frequently described as a canon of statutory construction, but it does not function as a

The 9/11 World Trade Center Monument, outside of Elko's City Hall.

Photo courtesy of Curtis Calder, Elko City Manager

standard rule of construction where the intention of the enactment is to be discerned, if possible, from the language or, if necessary, from the statutory language or context of enactment.[1] Instead, it is a substantive, judicially-created rule that measures local government actions or enactments against its narrow standards and presumption – express, necessarily implied, absolutely essential, presumed not to exist.

Dillon's Rule is still an active factor in the Nevada municipal landscape, turning up in differing shapes in cases involving local entities and receiving detailed discussion in recent legislative sessions. This article will briefly recount that case law and legislative activity.

Local Government Creation

Legislative creation of, and control over, local governmental entities stems from several constitutional provisions. Municipal corporations can be created in two ways. The first, under Nev. Const. art. 8, § 1, provides for creation by special law (NRS 46, city charters). The second, under Nev. Const. art. 8, § 8, allows for creation under general laws (NRS 266 (cities) and 318 (general improvement districts). The third provision, Nev. Const. art. 4, § 25, applies to the creation of a uniform county and township government throughout the state (NRS 243, 244).

Thirteen Nevada cities exist by special acts created by city charters. Special acts have also been used to create approximately 14 other municipal corporations. Incorporation of cities by general law has been used for seven cities (most recently Fernley in 2001). Creation of districts, under general laws, to carry out specific functions is common and varied (from general improvement districts to weed control districts).

Nevada Cases

Eight years after the Tucker decision, the court decided State ex rel. *Rosenstock v. Swift*, 11 Nev. 128 (1876), a case challenging the legislature's appointment of initial city officials as part of the law creating Carson City. The application of the rule to cities or other municipal corporations was affirmed and the unbounded constitutional authority of the legislature over their creation and existence was recognized.

The principle was first extended to counties in *Waltz v. Ormsby County*, 1 Nev. 370, 377 (1865). "[A]nd that such officers can have no powers except those expressly granted by the legislature, is too well established to admit of question now." It continues to the present day. *State ex rel. Harvey v. Second Judicial Dist. Court*, 117 Nev. 754, 773, 32 P3d 1263 (2001) ("Counties are legislative subdivisions of the state and obtain their authority from the legislature").

Most probably, the absence of cases involving special districts stems from the fact that such districts are created to carry out relatively narrow, statutorily specified purposes with the method of financing those activities also prescribed by the underlying statute. This is far different from the situation Nevada cities and counties face: an increasing myriad of functions imposed by the state or federal governments, with a taxing regime almost fully centralized and controlled by the state government.

Variations of Dillon's Rule appear in at least three forms. One involves police power regulation of enterprises involving liquor, gaming and adult entertainment.[2] As one commentator has noted, the court, in cases such as these, appears willing to apply a more flexible, "sensible" or "reasonable" reading of the rule.[3] A second involves preemption by state law, as in *Lamb v. Mirin*, 90 Nev. 329, 526 P.2d 80 (1974), or a conflict with state law, as in *Falcke v. Douglas County*, 116 Nev. 583, 3 P.3d 661 (2000). Third, a version of the rule has also been applied to state administrative agencies, as in *City of Henderson v. Kilgore*, 122 Nev. 331, 131 P.3d 11 (2006).

Against this backdrop, generations of Nevada lawyers have advised their local government clients to proceed with caution, relying upon explicit statutory language.

Nevada Legislation

The Nevada Legislature has been contemplating the dichotomy of Dillon's Rule and home rule for more than 60 years. A 1952 Legislative Counsel Bureau report (Home Rule in Nevada) highlighted the significant number of local measures introduced in a legislative session (15 percent in 1947), which, in the 2007 session, was approximately 9 percent. Issues identified with so much local legislation included undue demands on the time of legislators in a limited session; a concomitant reduced amount of time for statewide matters; log rolling with members voting for another's local legislation in return for favorable votes on their own legislation; and cursory examination of local legislation because of a lack of interest by a nonresident legislator.

Recent legislative attempts to readjust the balance have resulted in the introduction of bills to accomplish this goal.

In 2005, the Senate Government Affairs Committee introduced Senate Bill (SB) 427, which, for counties, sought to abolish Dillon's Rule and impose a liberal construction upon county powers. The power to impose or increase a tax was restricted, requiring specific statutory authorization.

The committee allowed SB 427 to expire silently and automatically, without a hearing under Joint Standing Rule 14.3.1.

continued on page 8

DILLON'S RULE IN NEVADA

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The 2007 legislature took up the mantle, introducing SCR 10, calling for an interim study "concerning the powers delegated to local governments." A premise of the resolution was that "[a]llowing greater autonomy for local governments may promote more efficient use of limited governmental resources." The subjects of the study were to be the "structure, formation, function, and powers of local governments," the fiscal impact of abolishing Dillon's Rule, the feasibility of increasing local government powers and the experiences of states that had previously rejected Dillon's Rule. No further action was taken, and no interim study was conducted.

In 2009, a different tack was taken, with the introduction of SB 264. The bill shifted all tax authority – property, sales, room and fuel – to local governments. The bill sponsor, Senator Terry Care, noted the 2007 attempt at an interim study: "I had no success with this request. I am term-limited, so I am not requesting a study, but am trying to pass legislation." Care emphasized that local officials should be accountable to their constituents for taxing decisions, not legislators who often do not even reside in the locality seeking a tax increase. Senator William Raggio (and others) raised the question of statewide consistency: "Without limitation, control, supervision or monitoring, local governments will freewheel and compete for tax dollars. I can see problems ... Home rule cannot freewheel." Hearing on SB 264 Before the Senate Committee on Government Affairs 15, 17 (March 25, 2009).

At a followup Government Affairs Hearing eight days later, the winds had shifted, and so had Care: "Senator Care said SB 264 was perceived as a protax bill ... He proposed deleting the bill in its entirety and replacing it with language found in SCR 10 of the 74th Session." This time, the legislature authorized the formation of the Committee to Study Powers Delegated to Local Governments.

The eventual committee report made two main recommendations:

1. Create an advisory committee on intergovernmental relations, and
2. Adopt an incremental, Indiana-style approach to granting local governments additional powers.

Although both were introduced (as SB 385 and 392) in the 2011 session, they languished in Senate Committee on Government Affairs and perished, pursuant to Joint Standing Rule 14.3.3.

SB 385 – applied to both cities and counties, but not to other political subdivisions – abrogated Dillon's Rule, and proposed a presumption that any doubt as to the existence of a power must be resolved in favor of its existence. The bill emphasized that a board is granted its powers by statute, as well as "[a]ll other powers necessary or desirable in the conduct of [its] affairs." One limitation on the power to act is an express denial by the United States and/or Nevada Constitution, or by a statute. A second is if the power is granted to another entity. A final limitation involved prohibitions on conditioning or limiting civil liability, enacting laws governing civil actions, imposing duties on another political subdivision, imposing a tax – regulating in place of a state agency and ordering or conducting an election.

Proponents argued that the bill provided a list of limited powers and that, ultimately, the legislature could revoke the authority granted by the bill should it wish to do so. They also pointed out that bills do not get out of committee for a number of reasons, and that cities and counties, for reasons having nothing to do with the merits of a bill, must wait 18 months, under Nevada's biennial legislative schedule, to again pursue the bill. The bill was voted out of the Senate Government Affairs Committee and sent to the Assembly Government Affairs Committee. Hearing on SB 385 Before the Senate Committee on Government Affairs 29, 31-32 (April 8, 2011).

The Assembly Committee provided a different reception. There was concern about the breadth of the expansion of powers, about the ability of local entities to responsibly handle new authority and about the quality and consistency of legal advice provided to local authorities. After this hearing, no further action was taken and SB 385 expired, pursuant to Joint Standing Rule No. 14.3.3. Hearing on SB 385 Before the Assembly Committee on Government Affairs 10, 13-14 (May 2, 2011).

The present session has seen the introduction of SB 2, a duplicate of SB 385 from 2011. The bill applies to counties and cities. Hearings were held on February 27 and April 12, before the Senate Government Affairs Committee, followed by an 18 to 2 floor approval on April 18.

Conclusion

Some form of Dillon's Rule has been a part of Nevada's jurisprudence since early in its statehood. Recent efforts to abrogate the rule have included carefully demarcated areas (notably, taxation powers) where it will still apply in its present form. Passage, as has been repeatedly stated in committee testimony, would allow cities and counties much greater flexibility in dealing with mundane, day-to-day issues, such as naming rights for parks, graffiti removal or the towing of cars.

1 *Maynard v. Johnson*, 2 Nev. 16, reh'g denied, 2 Nev. 25, 33 (1866) ("Impressed by these influences and consideration, they passed the law, from the bowels of which we seek to eviscerate its meaning. Evisceribus Actus. What is its true meaning."); Elijah Swiney, John Forrest Dillon Goes to School: Dillon's Rule in Tennessee Ten Years After Southern Constructors, 79 Tenn. L. Rev. 103, 107-08 (2011).

2 *Ex Parte Sloan*, 47 Nev. 109, 217 P. 233 (1923); *State ex rel. Grimes v. Bd. of Comm'rs*, 53 Nev. 364, 1 P.2d 570 (1931); *Flick Theater, Inc. v. City of Las Vegas*, 104 Nev. 87, 752 P.2d 235 (1988).

3 *Louis v. Csoka*, The Dream of Greater Municipal Autonomy: Should the Legislature or the Courts Mofify Dillon's Rule, a Common Law Restraint on Municipal Power?, 29 N.C. Cent. L. J. 194, 206-07 (2007).

BRIAN CHALLY is Legal Services Director for the Las Vegas Valley Water District and Southern Nevada Water Authority.

From: Jgumz <jgumz@protonmail.com>
Date: May 2, 2020 at 10:15:15 AM PDT
To: tim callicrate <tim2tahoe@msn.com>, Sara Schmitz <schmitz61@gmail.com>, Matthew Dent <matthew.ivgid@gmail.com>
Cc: Diane Heirshberg <dbheirshberg@gmail.com>
Subject: Fw: Attorney General opinion 2005
Reply-To: Jgumz <jgumz@protonmail.com>

To the Audit Committee:
I understand the Audit Committee is addressing Item 4b on Dillon's Rule at its meeting on May 6, 2020. Please be aware that the Nevada Attorney General provided a ruling in 2005 (attached).

> ***"The power conferred upon cities and counties in NRS 244.1505 and NRS 268.028 vests discretionary power to make charitable contributions only with the governing body of the city and the board of county commissioners. The power granted to cities and counties is in the nature of a public trust that may not be exercised or delegated in the absence of statutory authorization. Therefore, the county and cities cannot confer their discretionary power to make charitable contributions."***
>
> Source: Nevada Attorney General Opinion (attached)

This Nevada Attorney General opinion should be included in any discussion and provided to your legal counsel. Matthew and Tim: this opinion has been provided in the past to you by email during 2019 and 2020.

Please let me know how to ensure this information and this specific opinion, 2005-01, is included in your and your legal counsel's consideration.

Joy Gumz
Incline Village, NV

------- Original Message -------
On Wednesday, March 25, 2020 3:42 PM, Jgumz <jgumz@protonmail.com> wrote:

> ***The power conferred upon cities and counties in NRS 244.1505 and NRS 268.028 vests discretionary power to make charitable contributions only with the governing body of the city and the board of county commissioners. The power granted to cities and counties is in the nature of a public trust that may not be exercised or delegated in the absence of statutory authorization. Therefore, the county and cities cannot confer their discretionary power to make charitable contributions.***
>
> Source: Nevada Attorney General Opinion (attached)
>
> IVGID is not a city or county. So as if it is currently making any charitable contributions, donations, "sponsorships" , or in-kind donations or charitable allowances - or planning this under its 2021 FY budget, , questions will be asked as to whether this is allowed under state law.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

AGO 2005-01 AGREEMENTS; CITIES AND TOWNS; COUNTIES; FUNDS: Due to the absence of legislative authority that provides cities and counties the power to delegate the discretionary function of making charitable contributions, TMWA is not vested with the power to make charitable donations to the River Fund.

Carson City, January 21, 2005

Honorable Richard A. Gammick, District Attorney, County of Washoe
Post Office Box 30083, Reno, NV 89520

Dear Mr. Gammick:

You have requested our opinion concerning the Truckee Meadows Water Authority (TMWA) and whether it may make charitable contributions of money within its control to the Truckee River Fund (the River Fund), particularly from money collected from water customers. TMWA was created in the year 2000, when the cities of Reno and Sparks and the County of Washoe entered into a Cooperative Agreement (the Agreement) pursuant to chapter 277 of the Nevada Revised Statutes (NRS). TMWA was established to acquire the water assets and operations held by Sierra Pacific Power Company in the Truckee Meadows. The Agreement sets forth the Conferred Functions and Powers of TMWA in § 5 and § 6 respectively of the Agreement.

In July 2004, TMWA approved the creation of a River Fund by and between TMWA and the Community Foundation of Western Nevada, a Nevada non-profit corporation.[1] The general purpose of the River Fund is to distribute the net income and principal of the Fund for the exclusive use for projects that protect and enhance water quality or water resources of the Truckee River, or its watershed.

QUESTION

Whether TMWA may make charitable contributions to the River Fund?

ANALYSIS

Under Nevada law, cooperative agreements that establish a separate legal entity must specify the precise organization, composition, and nature of such

[1] The Community Foundation of Western Nevada is a 501(c)(3) organization as set forth in the Internal Revenue Section Code of 1986 (26 U.S.C. 501 (c) (3)). This organization provides an umbrella charitable organization for Western Nevada communities to manage dedicated funds for specific purposes.

entity and the powers delegated thereto. NRS 277.120(1). In accordance with the requirements of NRS 277.120(1), § 6 of the Agreement provides a detailed list of "Powers" pertaining to TMWA's operation of a public water system. The specified powers include TMWA's ability to purchase and sell property; employ staff; issue bonds, notes, and other obligations; execute contracts; exercise the power of eminent domain; and "perform all other acts necessary or convenient for the performance of any Conferred Function or the exercise of any of its powers."

TMWA's powers arise solely out of the Agreement; there is no express legislative authority granted to TMWA. Thus, it must be determined whether Reno, Sparks, and the County of Washoe have the power to make charitable contributions; whether these public entities are authorized to delegate to TMWA the power to make charitable contributions; and if so, whether that power was specifically delegated to TMWA in the Agreement.

The Nevada Legislature, pursuant to NRS 244.1505 and NRS 268.028, vested counties and incorporated cities in Nevada with the discretionary power[2] to expend money to nonprofit organizations created for religious, charitable, or educational purposes for a selected purpose if it provides a substantial benefit to the inhabitants. Therefore, counties and cities have discretionary power to expend money for charitable purposes.

It must next be determined whether counties and cities are authorized to delegate to another entity their express statutory power to expend money to nonprofit organizations created for religious, charitable, or educational purposes.

There is no express legislative authority that allows or prohibits a county or city from delegating its discretionary power to expend money to nonprofit organizations created for religious, charitable, or educational purposes. However, there is a general rule of law concerning the delegation of power by a public agency that has been expressed by this Office. This Office has opined, "powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trust and cannot be surrendered or delegated to subordinates in the absence of statutory authorization." Attorney General letter opinion to Howard Barrett (November 23, 1981) *citing* to *California Sch. Emp. A. v. Personnel Com'n. of P.V.U.S.D.*, 474 P.2d 436, 439 (Ca. 1970); *See* Op. Nev. Att'y Gen. No. 96-11 (April 25,

[2] The power is discretionary because these statutes provide that a city and a board of county commissioners "may" expend money for charitable purposes.

1996) (City of Reno Redevelopment Agency had no authority to enact rules or regulations which altered or enlarged the terms of legislative enactments); *See also* 63C AM. JUR 2D *Public Officers and Employees* § 235 (2004).

The power conferred upon cities and counties in NRS 244.1505 and NRS 268.028 vests discretionary power to make charitable contributions only with the governing body of the city and the board of county commissioners. The power granted to cities and counties is in the nature of a public trust that may not be exercised or delegated in the absence of statutory authorization. Therefore, the county and cities cannot confer their discretionary power to make charitable contributions to TMWA. As a result, TMWA may not make charitable donations to the River Fund absent express legislative authority.

Based on the foregoing, it is unnecessary to determine whether the discretionary power to make charitable contributions was specifically delegated to TMWA.

CONCLUSION

Due to the absence of legislative authority that provides cities and counties the power to delegate the discretionary function of making charitable contributions, TMWA is not vested with the power to make charitable donations to the River Fund.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: SONIA E. TAGGART
Senior Deputy Attorney General

Dillon's Rule Overview

BBK | BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Summary

- Introduction to Dillon's Rule
- Overview of Items at Issue
- Questions

This is a high-level review of complicated issues.

Intro to Dillon's Rule

- Two basic ways to handle local governments (not buckets but continuum)
  - Dillon's Rule
  - Home Rule
- Dillon's Rule: Local gov can only act as permitted by state statute
- Home Rule: Local gov has the general authority to act (even if in contravention of state statutes)

Intro to Dillon's Rule

- Dillon's Rule results from a 1868 Iowa case:
  - The true view is this: Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the State, and the corporation could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

Intro to Dillon's Rule

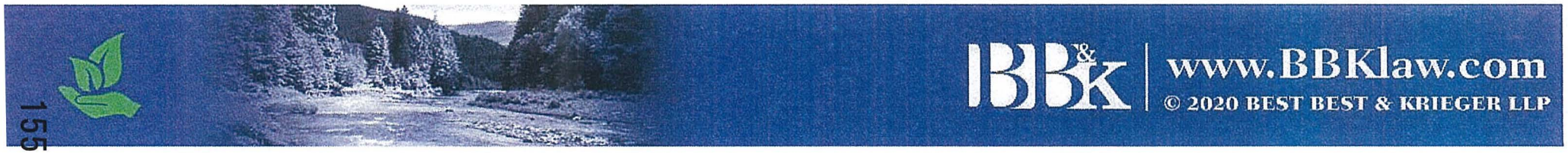
- Nevada has traditionally been a Dillon's Rule state (*Rosenstock v. Swift*, 11 Nev. 128 (1876).)
  - However, provides some form of home rule to cities and counties
- Modifications to rule have not been extended to GIDs or other districts
  - Remain creatures of state statute

Questions Re IVGID Authority

- IVGID has those basic powers set forth in NRS 318.116
  - Recreation
  - Sewer
  - Solid Waste
  - Water
- IVGID has those other express administrative powers in NRS 318

Questions Re IVGID Authority

- IVGID's express powers include the following:
  - **NRS 318.205 Bylaws.** The board shall have the power to adopt and amend bylaws, not in conflict with the Constitution and laws of the State:
    1. For carrying on the business, objects and affairs of the board and of the district.
    2. Regulating the use or right of use of any project or improvement.
  - **NRS 318.210 Implied powers.** The board shall have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.



Questions Re IVGID Authority

Issue	Authorization	Notes
Business travel	NRS 318.180, 318.185, 318.210	-Employees should receive reasonable reimbursements -Per diems are an option in lieu of reimbursements but may be taxable -Washoe County has adopted an ordinance. (WCC 5.351 et seq.)
Employee rewards	NRS 318.180, 318.185, 318.210	-Common way to recognize the hard work and efforts of employees -Should be reasonable
Employee celebration expenses	NRS 318.180, 318.185, 318.210	-Same as above

Questions Re IVGID Authority

Issue	Authorization	Notes
Non-monetary support to non-profits or community groups	NRS 318.116, 318.210	-Support should be based on an express power (i.e., use of recreation facilities) -Policy can outline scope of program (See P&P Reso No. 132 and Reso No. 1701)
Monetary support to non-profits or community groups	NRS 318.116, 318.210	-Support should be reasonable and based on an express power (furtherance of recreation)

Questions?

Joshua Nelson
Best Best & Krieger LLP
joshua.nelson@bbklaw.com
916.551.2859