

## MEMORANDUM

**TO:** Audit Committee

**THROUGH:** Matt Dent

**FROM:** Clifford F. Dobler

**SUBJECT:** External review on the effect of leasing property to nonprofit tenants at below market rates and complying with Dillon's Rule relating the absence of specific references to Donations in NRS. Chapter 318 General Improvement Districts.

**STRATEGIC**

**PLAN REFERENCE(S):** None

**DATE:** 11-30-2020

---

### **I. RECOMMENDATION**

That the Audit Committee makes a motion recommending to the IVGID Board of Trustees to proceed immediately with submitting a petition to be filed with the District Court in Washoe County to obtain a judicial examination and determination of the validity of the power to lease property to Non Profit organizations at below market rates as provided by NRS 43.100 and relating to Dillon's Rule.

For this motion, "property" would include ALL recreational venues and facilities.

Authority to submit a petition to District Court

*NRS 43.100 Petition for judicial examination and determination of validity of power, instrument, act or project: Facts; verification.*

*1. In its discretion the governing body may file or cause to be filed a petition at any time in the district court in and for any county in which*

*the municipality is located or any act or project is undertaken, wholly or in part, praying a judicial examination and determination of the validity of any power conferred or of any instrument, act or project of the municipality, whether or not such power has been exercised, such instrument has been executed or otherwise made or such act or project has been taken.*

*2. Such petition shall set forth the facts whereon the validity of such power, instrument, act or project is founded and shall be verified by the Executive Officer.*

*(Added to NRS by 1969, 135)*

## **II. CAUSE FOR FAIR AND REASONABLE DOUBT**

Legislative findings and declaration make clear under NRS 268.001(2) that "In Nevada's jurisprudence, the Nevada Supreme Court has adopted and applied Dillon's Rule to county, city and other local governments". *Local governments* would probably include general improvement districts.

NRS provides clear evidence that Donations can be made by Counties (NRS 244.1505) and Cities (NRS 268.028). There is no statement in NRS 318 (general improvement districts) providing the expressed authority of IVGID to make Donations of any kind.

Based on NO expressed authority to make donations under NRS Chapter 318, a general improvement district DOES NOT have the expressed power to provide cash or in kind donations to nonprofit organizations and such authority can only be drawn from implied or assumed authority in other sections of NRS.

Board of Trustee Policy 132 and Resolution 1701 attempts to create an illusion that the use of "yield management" provides a fair rental value for the facilities to be used by Nonprofits. In other words, since the facility or venue is not being utilized any amount of revenue received is

fair. Since most Nonprofits plan their events far in advance of the actual event day, IVGID staff would not have any knowledge that a facility or venue would not be used on a future date. In addition, if yield management is the objective to obtain maximum revenues, then the unused facility or venue must be made to ALL seekers, not limited to Nonprofits. Such an approach to limiting the use of yield management to Nonprofits would be discriminatory.

Conclusion. The audit committee should not be required to make a decision on the validity of an opinion from IVGID legal counsel when a remedy is provided in Nevada Revised Statutes.

## II. **BACKGROUND**

In April and May, 2020, two residents of Incline Village requested the Audit Committee to seek legal counsel to investigate whether IVGID has the authority to make certain questioned expenditures which could be in direct violation of Dillon's Rule which requires expressed powers from the State of Nevada to make the questioned expenditures.

On June 30, 2020, Josh Nelson, IVGID's legal counsel, provided a presentation on his review and conclusions of IVGID's compliance with Dillon's Rule relating to the questioned expenditures brought forth by citizens. In general, Mr. Nelson found that the IVGID had proper authority under Dillon's Rule, however, suggested that certain Board Policies be adopted to allow certain expenditures. Audit Committee member Schmitz asked Mr. Nelson to identify the policies that needed to be drafted or were adequate policies in existence that needed to be reviewed and Ms. Schmitz concluded the policy review might be a good next step.

On September 2, 2020 Mr. Nelson's June presentation was again reviewed by the Audit Committee. According to meeting minutes the Audit Committee purported to request that Mr. Nelson provide a written opinion on his conclusions regarding the questioned expenditures and

the opinion could then be posted on the District's website. Mr. Nelson requested that he provide his written opinion to the Audit Committee prior to the Audit Committee requesting an opinion from the Nevada Attorney General.

At large member Mr. Aaron asked Nelson if the list of staff expenditures was all inclusive and Mr. Nelson indicated it was limited to the 8 items listed in the citizens April and May correspondence .

On September 30, 2020 the agenda called for Mr. Nelson to present his written opinion which was not on Nelson's firm letter head. At large member Mr. Tullock requested the opinion be on Nelson's firm letter head. The agenda item was postponed.

On November 10, 2020, Mr. Nelson's written opinion was reviewed by the Audit Committee and a request was made for Mr. Nelson to provide the content on each and every NRS Statute and Board Policy and Practice stated in his opinion. The agenda item was limited to only acknowledging receipt of Mr. Nelson's written opinion

### III. OPINION OF IVGID' LEGAL COUNSEL

In the November 10, 2020 written opinion by IVGID's Legal Counsel ANY IVGID property which is leased to a Non Profit organization at below market rates is allowed under NRS chapter 318.

The Authorities cited for leasing property were:

*NRS 318.160 Acquisition and disposal of and encumbrances on property. Except as otherwise provided in NRS 318.512 to 318.5126, inclusive, the board shall have the power to acquire, dispose of and **encumber** real and personal property, and any interest therein, including **leases**, easements, and revenues derived from the operation thereof.*

**A LEASE IS AN ENCUMBERANCE**

***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*

Creating a benefit for Non Profits by providing below market rents would be considered an "in kind donations". IVGID's Legal Counsel states: "Even if considered a "donation" it would be authorized as incidental to this express power" (leasing of property) under NRS 318-160 and `NRS 318.210 would apply as the below market rents would be 'incidental' as to the basic powers to lease property under NRS. 318.160.

Further IVGID's legal Counsel believes the power to provide below market rents can also be found by citing NRS 318.205 (2).

***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.*

*(Added to NRS by 1959, 465; A 1967, 1715)*

The reference to NRS 318.205 may not be applicable or have any credence if expressed powers to provide donations are not stated within the Constitution and laws of the State of Nevada (NRS) and a requirement of Dillon's Rule. In other words, would a modification of the District's bylaws allow the District to provide below marker rents to private non profits, if the Bylaws would "trump" State Law detailing expressed powers required by Dillon's Rule?

### **III. BID RESULTS**

*Not required*

### **IV. FINANCIAL IMPACT AND BUDGET**

*Not required*

**V. ALTERNATIVES**

Forward the opinion of IVGID's legal counsel to the Board of Trustees without any recommendation from the Audit Committee

**VI. COMMENTS**

IVGID's legal counsel is not an independent party. Legal opinions by previous IVGID legal counsel have proven to be incorrect and unfortunately wasted considerable resources when subsequent opinions by outside legal firms provided opinions which were not the past experiences

**VII. STRATEGIC PLAN REFERENCE(S)**

None

**VIII. BUSINESS IMPACT**

None.

or