a. Memorandum dated April 22, 2020 from Cliff Dobler and Linda Newman; Subject: Second request to amend budget form 4404LGF with the Department of Taxation for the FY 2019/2020 budget to comply with IVGID Board Resolution 1838, GASB 54, and NRS 354 (12 pages)

Memorandum

April 22, 2020

To: IVGID Audit Committee Chair Dent and Trustees Callicrate and Schmitz

cc: IVGID Trustees Morris and Wong

cc: IVGID Interim GM Winquest

cc: IVGID Director of Finance Navazio

From: Clifford F. Dobler and Linda Newman

Re: Second Request to Amend Budget Form 4404LGF with the Department of Taxation for the FY 2019/2020 Budget to Comply with IVGID Board Resolution 1838, GASB 54, and NRS 354

On September 9, 2019, we provided a Memorandum notifying the former Audit Committee that the fiscal year 2019/2020 Budget Form 4404LGF submitted to the Department of Taxation was filed incorrectly by budgeting expenditures for capital projects and debt service in the Community Services and Beach Special Revenue Funds. This budgeting violated Board Resolution 1838 establishing the funds, GASB Statement 54 and Nevada Revised Statutes requiring compliance with Generally Accepted Accounting Principles. We also identified the fallacies in former Director of Finance Eick's narrative which was included with the Budget Forms submitted to the State. Mr. Eick's unilateral determination that the Community Services and Beach Capital Project and Debt Service Funds would become inactive and used only in the event the District issues bonds for a specific construction project contradicted Board Resolution 1838 and violated Generally Accepted Accounting Principles as mandated by GASB statements. We requested the Audit Committee take action to amend the budget to properly reflect the requirements of Board Resolution 1838 and the mandated compliance with GASB Statement 54. (Memo Attached). To date, we have not received a response from Trustees Wong and Morris who served on the Audit Committee at that time and no action has been taken.

At the April 14, 2020 Board of Trustees meeting, new Director of Finance Navazio reported that the current DRAFT budget for fiscal year 2020/2021 had been prepared incorrectly along the lines of the incorrect fiscal year 2019/2020 budget. He stated that the Draft would have to be corrected to properly reflect revenues and expenditures for operations, capital projects and debt service in their respective funds for Community Services and the Beaches in order to be in compliance with Nevada law, GASB statements, and Board Resolutions. (Live stream at 3:15.21) His conclusion, of course, was correct. It should be expected that Mr. Navazio will prepare the 2020/2021 budget correctly.

However, since the fiscal year 2019/2020 Budget was incorrectly filed with the State, a BUDGET AMENDMENT must be submitted to the State. If the Budget is not corrected, the financial statements for the future 2019/2020 Comprehensive Annual Financial Report will be prepared incorrectly. This outcome must be avoided.

We once again recommend that the fiscal year 2019/2020 budget be amended to properly reflect expenditures for capital projects and debt service for the Community Services and Beaches be in the appropriate Funds. The Board of Trustees must immediately take action to approve the amendment and submit the amended Budget to the Department of Taxation prior to June 30, 2020. Without this action, former Audit Committee members and current Trustees Wong and Morris who voted to approve the 2019/2020 budget will have violated Nevada law and failed to comply with their own Resolution. We request written assurance that an amendment will be brought before the full Board for approval.

ATTACHMENT #1

Memorandum

TO: IVGID Audit Committee Chair Trustee Phil Horan

CC: IVGID Board Chair and Member of the Audit Committee Kendra Wong

IVGID Board Treasurer and Member of the Audit Committee Peter Morris

IVGID Board Secretary Tim Callicrate

IVGID Trustee Matthew Dent

IVGID Interim General Manager Indra Winquist

FROM: Clifford F. Dobler and Linda Newman

DATED: September 9, 2019

SUBJECT: Inaccurate Information in the 2019/2020 fiscal year budget

On May 22, 2019, the Incline Village General Improvement District Board of Trustees approved annual budget form 4404 LGF for the fiscal year ending June 30, 2020 (the "budget") for submittal to the Nevada Department of Taxation.

The budget for the Community Services Special Revenue Fund, the Community Services Capital Projects Fund, the Community Services Debt Service Fund, the Beach Special Revenue Fund, the Beach Capital Projects Fund and the Beach Debt Service Fund were not prepared in accordance with Board Resolution 1838. This Resolution specifically states the type of revenues and expenditures which must be reported in each fund. As required under NAC 354.241, the formation of these funds required the adoption of a Board resolution as well as the approval of the Nevada Department of Taxation.

The Resolution clearly states that expenditures for capital projects MUST be accounted for in the Capital Project Funds and expenditures for debt service MUST be accounted for in the Debt Service Funds. The budget prepared for the six funds completely ignores the Resolution and improperly budgets all capital project and debt service expenditures in the Special Revenue Funds.

As a consequence, the budget does not comply with Generally Accepted Accounting Principles ("GAAP") and violates the requirements of a special revenue fund as defined in Governmental Accounting Standards Board Statement ("GASB") #54. GASB #54 states: "A special revenue fund is used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditures for specified purposes other than debt service or capital projects." For your reference, per GASB #54, capital projects funds are used to account for and report financial resources that are restricted, committed or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets. Also, according to GASB #54, debt service funds are used to account for and report financial resources that are restricted, committed or assigned to expenditure for principal and interest. Debt service funds are used to report resources if they are legally mandated. Financial resources that are being accumulated for principal and interest maturing in future

years are also reported in debt service funds. Each year, together with the annual budget, the Board of Trustees, by a resolution, authorizes collection of Recreation Standby and Service Charges (also known as Recreation Facility Fee and Beach Facility Fee) which commits a portion of each fee specifically for operations, capital projects and debt service.

The budget message included with the State budget forms providing an explanation for the change in accounting and reporting for the budgeting of these six funds has absolutely no relevance to compliance with the principles, practices and procedures mandated by GASB for proper accounting and reporting. The message states:

"One major variation year on year relates to the District's use of Capital Projects and Debt Service Funds for the Community Services and Beach activities from July 1, 2015 through June 30, 2019. The objectives for using these funds was the expectation of the need to demonstrate the sources and uses of the facility fee for capital expenditures and debt service. Our experience has been expenditures are the most sought after information. This can be demonstrated effectively within the functional expenditure reporting in Special Revenue Funds. Therefore the Capital Projects and Debt Service Funds will become inactive as of July 1, 2019 and used only in the event the District issues bonds for a specific construction project."

For those unfamiliar with the rigors of proper accounting and reporting, staff's speculation on what citizens and others seek as useful information in financial reporting is immaterial. Only the Governmental Accounting Standards Board has the authority to establish the standards to promote clear, consistent, transparent and comparable financial reporting for local and state governments. And, only the Board can modify or rescind its own Board Resolutions. As you are aware, there was no separate Agenda item placed for a Board vote to do so nor resubmission to the Nevada Department of Taxation providing a Board approved modification or rescission of Resolution 1838.

We respectfully request that the budget be amended to properly reflect the requirements of Board Resolution 1838 and compliance with the requirements of GASB #54.

Clifford F. Dobler

email: cfdobler@aol.com
mobile: 775-722-4487

Linda Newman

email: linda@marknewman.net
mobile: 775-225-1836

EXHIBITS:

Exhibit A – Link to the FY 2019 Budget: https://www.yourtahoeplace.com/uploads/pdf-ivgid/5-22-19_Item_I.5._-_General_Business_-_Budgets.pdf

Exhibit B – Board Resolution 1838

Exhibit C – NAC 354.241

Exhibit D – GASB #54 Definitions of Special Revenue Fund, Capital Projects Fund and Debt Service Fund

Exhibit E – Excerpt from Resolution 1871 Identifying Current and Historical Budgeted Allocation of the Recreation and Beach Fees among Operations, Capital Projects and Debt Service. Here is the link for the complete Resolution: https://www.yourtahoeplace.com/uploads/pdf-ivgid/5-22-19_Item_I.6._-_General_Business_-_Resolution_1871.pdf

Exhibit F - Excerpt of IVGID FY 2020 Budget Message

EXHIBIT "B"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT ~ ONE TEAM

RESOLUTION NO. 1838

A RESOLUTION TO CREATE GOVERNMENTAL FUND TYPE; SPECIAL REVENUE, CAPITAL PROJECTS AND DEBTS SERVICE FUNDS FOR THE INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT FOR COMMUNITY SERVICES AND BEACH FUNDS AS REQUIRED BY NEVADA ADMINISTRATIVE CODE 354.241, EFFECTIVE AS OF JULY 1, 2015

RESOLVED, by the Board of Trustees of the Incline Village General Improvement District, Washoe County, Nevada, that

WHEREAS, pursuant to Nevada Administrative Code (NAC) Section 354.241, a local government is required to adopt a Resolution to create a fund types covered by Nevada Revised Statute 354.624 5 (a); and

WHEREAS, the District Community Services and Beach Funds provides services as defined under Nevada Revised Statute (NRS) 318, which in effect requires the use of those Fund's fund balance for a specific purpose; and

WHEREAS, on December 10, 2014, the Board of Trustees directed staff to apply for approval of the District's 2015-16 budget by the Nevada Department of Taxation utilizing Special Revenue, Capital Projects and Debt Service Fund accounting for Community Services and the Beach Funds; and

WHEREAS, the District expects to receive notice that its budget is found to be in compliance with NRS 354.598 by the Nevada Department of Taxation.

NOW, THEREFORE, IT IS ORDERED, as follows:

1. Effective July 1, 2015 the Incline Village General Improvement District, Nevada shall establish the governmental fund type Special Revenue, Capital Projects and Debt Service Funds for use by its Community Services and Beach Funds.

2. The table on the last page of this Resolution contains the required elements 1-4 and 6-7 under NAC 354.241, element 5 is met by the existing fund balance of the affected funds.

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT ~ ONE TEAM

RESOLUTION NO. 1838

A RESOLUTION TO CREATE GOVERNMENTAL FUND TYPE; SPECIAL REVENUE, CAPITAL PROJECTS AND DEBTS SERVICE FUNDS FOR THE INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT FOR COMMUNITY SERVICES AND BEACH FUNDS AS REQUIRED BY NEVADA ADMINISTRATIVE CODE 354.241, EFFECTIVE AS OF JULY 1, 2015

* * * * * *

I hereby certify that the foregoing is a full, true and correct copy of a resolution duly passed and adopted at a regularly held meeting of the Board of Trustees of the Incline Village General Improvement District on the 21st day of May, 2015, by the following vote:

AYES, and in favor thereof, Trustees: Jim Smith, Kendra Wong, Bill Devine, and Jim Hammerel
NOES, Trustees: Trustee Callicrate
ABSENT, Trustees: None

/s/ Jim Hammerel
Jim Hammerel
Secretary, IVGID Board of Trustees

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT ~ ONE TEAM

RESOLUTION NO. 1838

A RESOLUTION TO CREATE GOVERNMENTAL FUND TYPE; SPECIAL REVENUE, CAPITAL PROJECTS AND DEBTS SERVICE FUNDS FOR THE INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT FOR COMMUNITY SERVICES AND BEACH FUNDS AS REQUIRED BY NEVADA ADMINISTRATIVE CODE 354.241, EFFECTIVE AS OF JULY 1, 2015

Fund Name	Purpose	Source of Revenues	Short-term Expenditures	Long-term Expenditures	Plan for Fund Balance	Adequacy of Fund Balance
Community Services – Special Revenue	Recreational activities conducted by the District under NRS 318, other than Beach locations	User fees, stand by charges, rents, grant, investment earnings and other income	Operating expenditures to provide recreational activites	Transfers out to capital purchases and debt service to support recreational activities	Meet the minimum necessary to maintain District recereational activities	Consider the District's Board Policy on Approprirate Level of Fund Balance
Community Services – Capital Expenditure	Capital expenditures related to recreational activities conducted by the District under NRS 318, other than Beach locations	Sales of coverage and capital assets and transfers from the Community Services Special Revenue Fund	Operating expenditures related to Community Services capital expenditures	Capital purchases to support Community Services recreational activities	Meet the minimum necessary to execute Community Services capital purchases	Consider the District's Board Policy on Approprirate Level of Fund Balance
Community Services – Debt Service	Debt service expenditures related to recreational activities conducted by the District under NRS 318, other than Beach locations	Transfer from the Community Services Special Revenue Fund	Operating expenditures related to Community Services debt service expenditures	Debt service expenditures to support Community Services recreational activities	Meet the minimum necessary to execute Community Services debt service expenditures	Consider the District's Board Policy on Approprirate Level of Fund Balance
Beach – Special Revenue	Recreational activities conducted by the District under NRS 318 for Beach locations	User fees, stand by charges, rents, grant, investment earnings and other income	Operating expenditures to provide Beach recreational activites	Transfers out to capital purchases and debt service to support Beach recreational activities	Meet the minimum necessary to maintain District Beach recereational activities	Consider the District's Board Policy on Approprirate Level of Fund Balance
Beach – Capital Expenditure	Capital expenditures related to recreational activities conducted by the District under NRS 318 for Beach locations	Sales of coverage and capital assets and transfers from the Beach Special Revenue Fund	Operating expenditures related to Beach capital expenditures	Capital purchases to support Beach recreational activities	Meet the minimum necessary to execute Beach capital purchases	Consider the District's Board Policy on Approprirate Level of Fund Balance
Beach – Debt Service	Debt service expenditures related to recreational activities conducted by the District under NRS 318 for Beach locations	Transfer from the Beach Special Revenue Fund	Operating expenditures related to Beach debt service expenditures	Debt service expenditures to support Beach recreational activities	Meet the minimum necessary to execute Beach debt service expenditures	Consider the District's Board Policy on Approprirate Level of Fund Balance

Exhibit "C"

TAXES AD VALOREM

NAC 354.211 Submission to Department of resolution levying common rate for common services in unincorporated towns. (NRS 354.107, 354.594) The board of county commissioners shall submit to the Department a copy of any resolution which levies a common rate of taxes ad valorem for common services provided in unincorporated towns.
(Added to NAC by Tax Comm'n, eff. 5-16-86)

NAC 354.221 Submission of amended final budget which changes combined rate. (NRS 354.107, 354.594, 354.598) In addition to the requirements set forth in subsection 6 of NRS 354.598, a local government shall submit an amended final budget to:
1. The county auditor within 15 days after making any change in its final budget which decreases the combined ad valorem tax rate; and
2. The county clerk within 15 days after making any change in its final budget which increases or decreases the combined ad valorem tax rate.
(Added to NAC by Com. on Local Gov't Finance by R201-01, eff. 4-5-2002)

CREATION OF FUNDS

NAC 354.241 Contents and filing of resolution adopted to create certain funds. (NRS 354.612, 360.090) A resolution adopted by a local government to create a fund of a type which is listed in paragraph (a) of subsection 5 of NRS 354.624, must be filed with the Department immediately upon adoption and must contain:
1. A statement of the purpose of the fund.
2. The sources of the money that is expected to be deposited in the fund.
3. A short-term and long-term plan for the expenditures from the fund.
4. A plan for the retention or disposition of the balance, reserves and retained earnings of the fund.
5. A mechanism for curing deficiencies in the balance, reserves and retained earnings of the fund.
6. The method by which a determination will be made as to whether the balance, reserve and retained earnings of the fund are reasonable and necessary to carry out the purpose of the fund.
7. A list of all statutes and regulations that apply to the fund.
(Added to NAC by Tax Comm'n, eff. 7-9-96)

LETTER OF CREDIT; ADVANCE APPORTIONMENT OF TAX

NAC 354.270 Letter of credit issued to local government. (NRS 360.090)
1. As used in this section, "letter of credit" means an authorization from a county treasurer to a county auditor to honor warrants of a local government prior to the distribution of tax receipts to the account of the local government.
2. A letter of credit may be issued on behalf of an entity at the option of the county treasurer if the following conditions are met:
(a) The letter of credit must be requested of the county treasurer by the governing body.
(b) A letter of credit cannot be issued to cover more than 75 percent of the undistributed tax receipts on hand in the county treasury to be distributed to the entity.
(c) The county treasurer shall make a distribution of taxes to cover any outstanding letters of credit prior to the end of each fiscal year.
[Tax Comm'n, Local Gov't Reg. part No. 2, eff. 11-7-69]

NAC 354.280 Advance of taxes apportioned to local government. (NRS 360.090)
1. Any entity entitled to an apportionment of taxes may request of the county treasurer an advance tax apportionment if the following procedures are met:
(a) An advance apportionment must be requested of the county treasurer by the governing body.
(b) An advance apportionment cannot be made in excess of 75 percent of the undistributed tax receipts on hand in the county treasury to be distributed to the entity.
(c) The county treasurer shall make an apportionment of taxes to cover any outstanding special apportionment prior to the end of each fiscal year.
2. Such an apportionment may be made at the option of the county treasurer.
[Tax Comm'n, Local Gov't Reg. part No. 2, eff. 11-7-69]

INTERFUND LOANS

NAC 354.290 Temporary interfund loans: Conditions; interest. (NRS 354.107, 354.6118)
1. Unless otherwise prohibited by law, the governing body of a local government may make a temporary interfund loan if:
(a) The governing body complies with the provisions of NRS 354.6118;
(b) Any money for the loan which is obtained from the proceeds from the sale of a bond is used only for the purposes set forth in the bond ordinances;
(c) The loan is not made from any debt service fund or from any fund established or maintained as a fund dedicated to the payment of bonded debt and interest;
(d) The resolution authorizing the loan specifies whether interest will be charged and the rate thereof, if any;
(e) It is agreed in writing that the loan must be repaid within 1 year after the date on which the loan was made;
(f) A copy of the resolution authorizing the loan is filed with the Department; and
(g) The governing body agrees to notify the Department when the loan has been repaid.
2. If the resolution authorizing the making of a temporary interfund loan does not specify whether interest will be charged as required pursuant to paragraph (d) of subsection 1, no interest may be charged.
3. As used in this section:
(a) "Component unit" means a separate legal entity from a local government whose financial statements must be included in the annual audit of that local government conducted pursuant to NRS 354.624.
(b) "Temporary interfund loan" means a loan of money for a term of less than 1 year from a fund to meet an immediate obligation of another fund in advance of receipt by the borrowing fund of sufficient revenues from regular sources, including such a loan from a fund of:
(1) A local government to:
(I) Another fund of that local government;

Governmental Fund Type Definitions

28. Governmental fund types include the general fund, special revenue funds, capital projects funds, debt service funds, and permanent funds, as discussed in paragraphs 29–35.

General Fund

29. The general fund should be used to account for and report all financial resources not accounted for and reported in another fund.

Special Revenue Funds

30. Special revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects. The term *proceeds of specific revenue sources* establishes that one or more specific restricted or committed revenues should be the foundation for a special revenue fund. Those specific restricted or committed revenues may be initially received in another fund and subsequently distributed to a special revenue fund. Those amounts should not be recognized as revenue in the fund initially receiving them; however, those inflows should be recognized as revenue in the special revenue fund in which they will be expended in accordance with specified purposes. Special revenue funds should not be used to account for resources held in trust for individuals, private organizations, or other governments.

31. The restricted or committed proceeds of specific revenue sources should be expected to continue to comprise a substantial portion of the inflows reported in the fund.[2] Other

[2]For revolving loan arrangements that are initially funded with restricted grant revenues, the consideration may be whether those restricted resources continue to comprise a substantial portion of the *fund balance* in the fund's balance sheet.

resources (investment earnings and transfers from other funds, for example) also may be reported in the fund if those resources are restricted, committed, or assigned to the specified purpose of the fund. Governments should discontinue reporting a special revenue fund, and instead report the fund's remaining resources in the general fund, if the government no longer expects that a substantial portion of the inflows will derive from restricted or committed revenue sources.

32. Governments should disclose in the notes to the financial statements the purpose for each major special revenue fund—identifying which revenues and other resources are reported in each of those funds.

Capital Projects Funds

33. Capital projects funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for capital outlays, including the acquisition or construction of capital facilities and other capital assets. Capital projects funds exclude those types of capital-related outflows financed by proprietary funds or for assets that will be held in trust for individuals, private organizations, or other governments.

Debt Service Funds

34. Debt service funds are used to account for and report financial resources that are restricted, committed, or assigned to expenditure for principal and interest. Debt service funds should be used to report resources if legally mandated. Financial resources that are being accumulated for principal and interest maturing in future years also should be reported in debt service funds.

Exhibit "E"

Incline Village General Improvement District Facility Fee Reconciliation by Parcel

Budget for 2019-2020	
Recreation Facility Fee charged to 8,203 Parcels	
Golf - Championship	$ 21
Golf - Mountain	40
Facilities	16
Diamond Peak Ski	(200)
Youth & Family Programming	25
Senior Programming	21
Recreation Center	97
Comm. Services Administration	127
Parks	89
Tennis	14
Per Parcel Operating Component	250
Per Parcel Capital Exp. Component	405
Per Parcel Debt Service Component	50
Total Recreation Fee Per Parcel	$ 705

Historical Recreation Fee Per Parcel

	Operating	Capital Projects	Debt Service	Total Fee
2019-20	***$ 250***	***$ 405***	***$ 50***	***$ 705***
2018-19	215	440	50	705
2017-18	215	330	160	705
2016-17	250	320	160	730
2015-16	266	308	156	730
2014-15	211	303	216	730
2013-14	239	277	214	730
2012-13	258	199	273	730
2011-12	199	242	274	715
2010-11	128	304	298	730

Budget for 2019-2020	
Beach Facility Fee charged to 7,748 Parcels	
Per Parcel Operating Component	$ 85
Per Parcel Capital Exp. Component	39
Per Parcel Debt Service Component	1
Total Beach Fee Per Parcel	$ 125

Historical Beach Fee Per Parcel

	Operating	Capital Projects	Debt Service	Total Fee
2019-20	***$ 85***	***$ 39***	***$ 1***	***$ 125***
2018-19	85	39	1	125
2017-18	85	39	1	125
2016-17	75	24	1	100
2015-16	75	24	1	100
2014-15	65	-	35	100
2013-14	63	-	37	100
2012-13	66	17	17	100
2011-12	98	-	17	115
2010-11	69	-	31	100

The combined Facility Fee for 2019-2020 would represent the tenth year held at the total of $830.

The District is expected to adopt the updated Community Services Master Plan during the budget year. Neither the operating nor capital budgets include any projects contemplated by this plan. Should any project's needs develop prior to June 30, 2020, they would have to follow the augmentation requirements to become authorized.

During the fiscal year 2016-2017 the District began the process of update and review of the Diamond Peak Master Plan by the Tahoe Regional Planning Agency (TRPA). This is a multi-year process that may not be completed until after June 30, 2020. A substantial portion of that capital project's budget will be carried over to 2019-20.

Governmental Fund Balance

The District Final Budget Summary reports the following select Fund Balances:

	Estimated Fund Balance 6/30/19	Projected Minimum by Board Policy	Projected Fund Balance 6/30/20
General Fund	$ 3,093,112	$ 199,000	$ 2,304,242
Comm. Services SR	$13,183,167	$4,493,000	$ 9,146,076
Beach Special Rev.	$ 1,749,171	$ 526,000	$ 1,123,442

Comparison across Fiscal Years Presented in Form 4404LGF

A fundamental aspect of the Form 4404LGF is comparison of information across the audited results of the fiscal year ending June 30, 2018, an estimated result for the year ending June 30, 2019, along with a presentation of the Tentative and Final budgets for the year ending June 30, 2020. The form and content for those three periods utilizes the same accounting principles and methodologies. Comparisons can be made knowing that differences are the consequence of circumstances, not methodology.

One major variation year on year relates to the District's use of Capital Projects and Debt Service Funds for the Community Services and Beach activities from July 1, 2015 through June 30, 2019. The objective for using these funds was the expectation for the need to demonstrate the sources and uses of the facility fee for capital expenditure and debt service. Our experience has been expenditures are the most sought after information. This can be demonstrated effectively within the functional expenditure reporting in Special Revenue funds. Therefore the Capital Projects and Debt Service funds will become inactive as of July 1, 2019 and used only in the event the District issues bonds for a specific construction project.

Another variation is in the level of activity for food and beverage operations. The fiscal year 2017-18 saw increased activity. However, the greatest jump for 2018-19 relates to the Beach Fund taking on delivering food and beverage services at the two beaches. For many years, this was a concessionaire service. The respective revenues and expenditures increase, as well as the bottom line results. This also resulted in increases to FTE's with the addition of staff.

b. April 2, 2020 e-mail communication regarding Dillon's Rule from Ms. Diane Heirschberg (8 pages)

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.

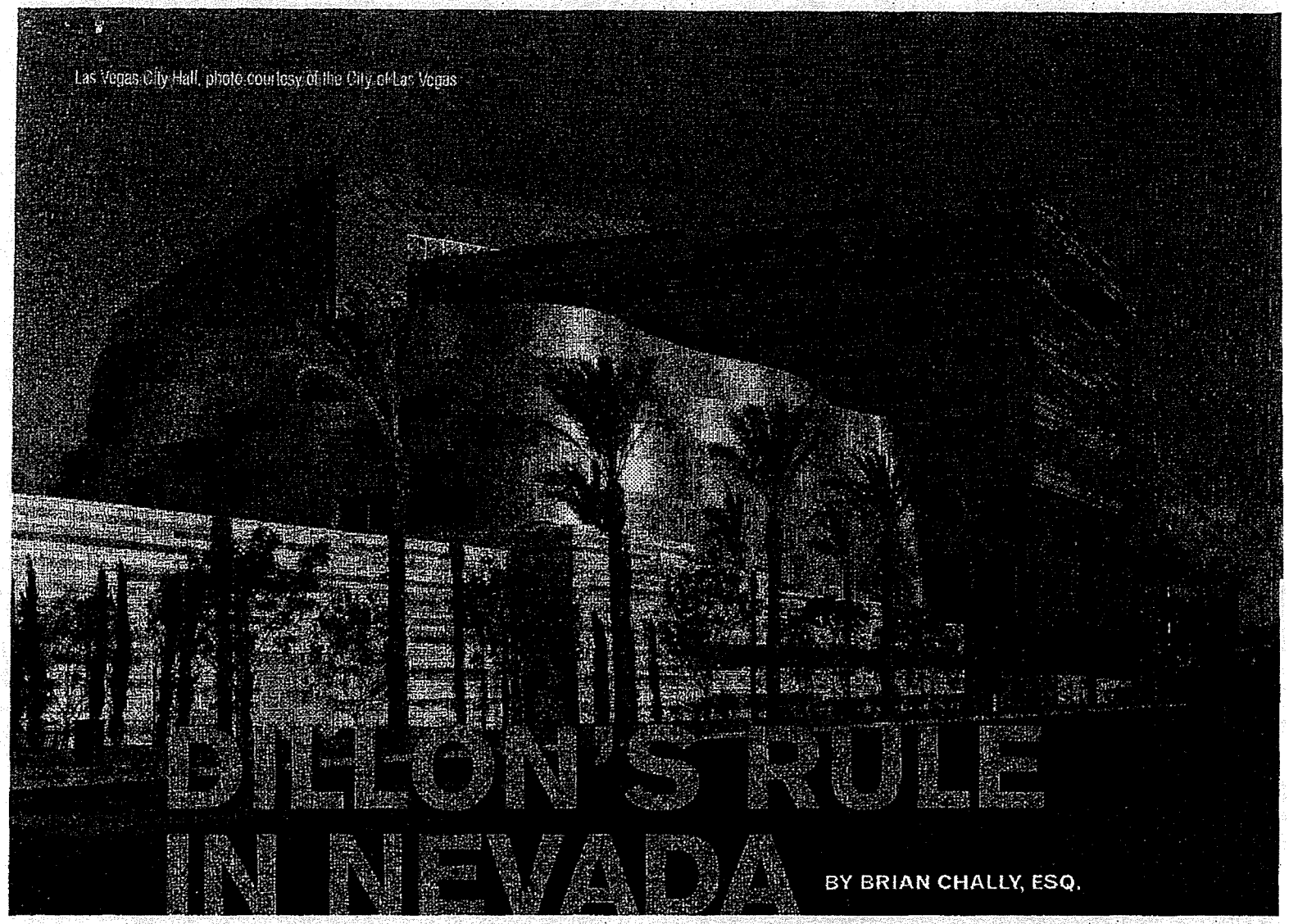
If your lawyers have already given advice on the above issues, hopefully the audit committee can get access to the writings they sent. If the legal advice was oral, I hope you will have the attorneys put it in writing to show IVGID's good faith reliance on the advice of counsel. And for going forward, 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



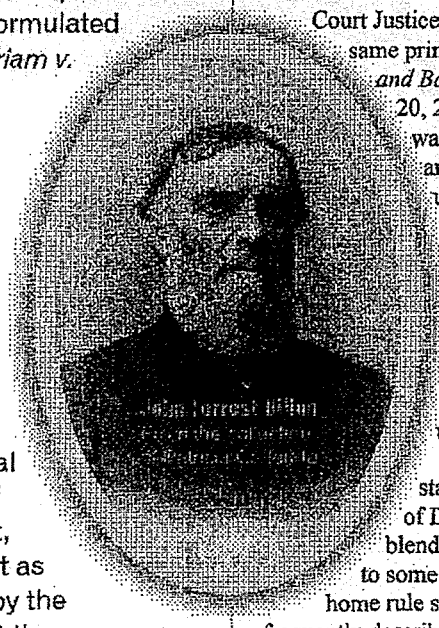
DILLON'S RULE IN NEVADA

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.

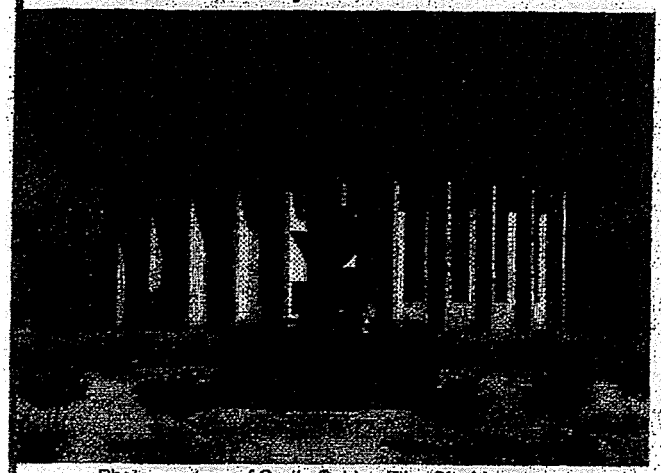


Photo courtesy of Curtis Calder, Elko City Manager

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

continued from page 7

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.

c. May 2, 2020 e-mail communication regarding Attorney General Opinion 2005 from Ms. Joy Gumz (4 pages)

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

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d. 14 points of errors in the CAFR from Cliff Dobler and Linda Newman dated April 7, 2020 (20 pages)

From: cfdobler@aol.com <cfdobler@aol.com>
Sent: Tuesday, April 21, 2020 9:49 PM
To: Matthew Dent; Sara Schmitz; Tim Callicrate; Peter Morris; Wong, Kendra; Winquest, Indra S.; Chorey, Nathan P.
Cc: linda@marknewman.net
Subject: 2nd Request to amend the 2019-2020 State Budget to comply with the law

Attached is Linda Newman and my second request to amend the 2019-2020 Budget Form 4404LGF to avoid violation with the law along with other issues.

We would like a response since it has been over 7 months without any action taken by this Board or any response from the Audit Committee.

Cliff Dobler and on behalf of Linda Newman 1

Number 1

Improper change in Accounting and Reporting from Business Activities (Enterprise) to Governmental Activities

There could be no basis in changing the accounting and reporting of the Community Services and Beach Funds from Enterprise funds to Government funds.

Historically, up until June 30, 2015, the activities of the recreational venues of the Community Service and Beach venues were accounted for and reported as Enterprise funds based on a bedrock of facts:

1) Nevada Revised Statutes 354.517 defines an enterprise fund as a fund established to account for operations (1) which are financed and conducted in a manner similar to the operations of private business enterprises, where the intent of the governing body is to have expenses (including depreciation) of providing goods or services on a continuing basis to the general public, financed or recovered primarily through charges to the users.

2) Paragraph 67 of GASB #34 states:

> that an enterprise fund may be used to report any activity for which a fee is charged to external users for good or services.
>
> Activities are ***required*** to be reported as enterprise funds if any one of the three criteria are met
>
> Two of the three conditions are met as follows:
>
> > Laws and regulations require that the activity's cost of providing services, including capital costs (such as depreciation), be recovered with fees and charges, rather than with taxes or similar revenues.
> >
> > Note: NRS 318-197
> >
> > The pricing policies of the activity establish fees and charges designed to recover its cost, including capital costs (such as depreciation or debt service)
> >
> > Note: Board Policy 6.1.0

All of the above requirements for enterprise accounting are met by the facts from the citations above. Historically, IVGID reported

Mr. Eick, Director of Finance for f IVGID in conjunction with the former GM Pinkerton and Legal Council Jason Guinasso chose to ignore the facts and created an alternative set of facts.

1) Decided the recreational venues were not conducted in a manner similar to a private business. Other than providing services for Parks, all remaining venues Golf, Ski, Facilities, Recreation Center and Tennis

are operated similar to a private business and most revenues are obtained from these business activities.

2) Ignored that the primary sources of revenues from the activities were charges to users. Substantially all revenues of both Community Services and Beach venues are charges to users (which include the Facility Fees).

3) Decided that the Facility Fees collected pursuant to NRS 318-197 were no longer charges for services but somehow were a tax and subsequently considered an imposed non exchange transaction (which are defined as taxes, fines, penalties, Gift/donations, grants, entitlements, and promises to give). This is totally false. The Facility Fees are exchange transactions. In exchange for payment of the Facility Fee, parcel owners can obtain Resident Cards and Punch Cards which can be used to obtain lower user rates at the recreational venues. Approximately 22,000 Resident Cards and 11,000 Punch Cards are obtained annually by residents. These residents obtain the Cards because they obviously believe that an equal value or more value is received via lower user rates at recreations venue in exchange for the payment of the Facility Fees.

4) Decided that the Districts pricing policies had changed yet Board Policy 6.1.0 adopted by the Board and effective on July 1, 2015 had not changed

5) Created Note 19 - Subsequent Events in the CAFR for fiscal year ending June 30, 2014

"Effective July 1, 2015, with its new fiscal and budget year, the District began utilizing Special Revenue, Capital Projects and Debt Service governmental fund accounting for the Community Services and the Beach Fund., which have to date been accounted for as enterprise funds. The District has changed its approach to the pricing of services and in particular recognizes that the use of the facility fee to provide recourses for capital expenditures and debt service cannot be displayed in a readily understandable fashion for its constituents."

There is no evidence that the approach to the pricing of services has ever changed. A change in accounting and reporting is not guided by constituents not being able to understand how funds are displayed.

At the December 16, 2015 IVGID Audited Committee meeting, Mr. Dan Carter of EideBailly provided answers to questions by members of the Audit Committee regarding the change in accounting. In response Mr. Carter stated: *"I guess I'll caveat the discussion with the fact that you know again that's a management decision and a board approved decision. We can't be in anyway be seen as approving those functions because we have to keep our independence with management what goes on up here."*

In another statement Mr. Carter stated: *It is unusual up here when we use the word fee like the Community Services fee and the Beach fee because it's actually technically a tax.*

It is quite clear that EideBailly never provided an opinion on the accounting transition, however, it was stated by IVGID management that the auditors provided consent for the transition . In addition, IVGID management stated that the Department of Taxation had approved the transition. This was totally false.

The basis assumption that the Facility Fees was a tax rather than a charge for services created a misguided understanding of the actual revenues being collected from parcel owners.

A separate opinion by EdieBailly is required that the change in accounting and reporting for the Community Services and Beach venues from Business activities to Governmental activities was either appropriate or inappropriate, based on GASB #34 and NRS.

:

Number 2

Error in Capitalizing conditions assessments and temporary repair work on the Effluent Pipeline which must be expensed

Statement of Net Position (CAFR page 21), Statement of Activities (CAFR page 22) Statement of Net Position (CAFR page 30), Statement of Revenues, Expenses, and Changes in Net Position (CAFR Page 31) and Notes to Financial Statements (CAFR pages 34-56). Also Management Discussion and Analysis and Transmittal Letter will be affected.

Since 2012, IVGID intended on replacing 6 miles of Effluent Pipeline in State Highway 28 and increased customer utility rates to provide resources for the replacement.

After a major spill from a leak in the effluent pipeline occurred in 2014, the Nevada Department of Environmental Protection ("NDEP") required IVGID to "provide a plan that shall immediately implemented to evaluate and repair or replace the export pipeline to protect Lake Tahoe and the Tahoe Basis from future unanticipated discharges" . IVGID immediately conducted a conditions assessment on the 6 miles of pipeline which had cumulated costs of approximately $1.4 million over a three year period. These costs were initially recorded as construction in progress then transferred to Capital Assets to be depreciated. These assessments were required by the NDEP mandate and should be expensed.

Approximately $1.2 million was spent in 2017 and 2018 to repair only 1,080 linear feet of effluent pipeline which costs was recorded as construction in progress and then transferred to Capital assets in 2019. These repairs were temporary in nature to satisfy NDEP mandates and should have been expensed as incurred. The District intends to relocate the existing effluent pipeline to the center of Highway 28 which will result in abandoning the existing pipeline within the next three years. The costs do not meet the requirements of Board practices or required minimum life of 10 years. According to Board Practice 2.9.0 - 1.2.4 any repair or refurbishment that will be capitalized, the outlay will substantially prolong the life on an existing fixed asset, rather than returning the asset to a functioning unit or making repairs of a routine nature.

An additional $546,000 (21%) of charges from the Internal Services Engineering Department relating to the assessments and repairs was also transferred from Construction in Progress to Capital Assets. These charges must be expensed.

By capitalizing these costs and depreciating the costs over an extended time period the financial statements of the Utility Fund are distorted and hides the actual expense impact of mandated assessments and temporary repairs.

According to Note 1J Significant Accounting Policies (CAFR page 40) the capitalization depreciable life for infrastructure assets are between 10 and 50 years. As such these repairs costs must be expensed.

These charge offs of approximately $3,100,000 will have a material impact on the Utility Fund Statement of Net Position (CAFR page 30), the Statement of Revenue, Expenses, and Changes in Net

Position (CAFR page 31) and the Statement of Cash Flows (CAFR page 32). Also the Statement of Net Position for the entire District (CAFR page 21) will required restatement.

In addition, Note 4 (CAFR page 46) and Management Discussion and Analysis (CAFR pages 15 & 19) will require corrections

Number 3

Feasibility and Master Plan Studies should be reclassified from Construction in Progress to expenses of Special Revenue Funds and Utility Fund affecting Statement of Net Position - (CAFR page21), Statement of Activities (CAFR page 22), Statement of Revenues and Expenses (CAFR page 25), Statement of Revenues and Expenses (CAFR pages 28 &29) Statement of Net Position (page 30) Statement of Revenues and Expenses (page 31), Statement of Cash Flows (page 32), Notes to Financial Statements (CAFR page 46)

Feasibility and Master Plan Studies

Several consultants have provided studies on recreational venues which costs have been recorded as construction in progress. These studies are updates to master plans, recommendations for rehabilitation of existing facilities or potential new facilities. There was no construction in progress nor is there any assurance that any recommendations will be accomplished.

The following is the list of studies that have been recorded as construction in progress.

Governmental Funds

Ski Area Master Plan Implementation - Phase 1	$67,302.73 Speculation - on short term ground lease
Ski Area Master Plan Update & Summer Activities Assessment	156.029.78 Speculation - on short term ground lease
Tennis Facility Study	40 142.24 Did not follow recommendations
Parks and Recreation Master Plan Update	261,501.64 Speculation
Incline Beach Facility Study	133,759.86 Speculation
	$658,736.25

Enterprise Fund

Cost sharing with Tahoe Transportation District - Environmental	
Assessment Effluent Pipeline Co-Location in Bike Path	$300,000.00 Speculation - Probably of abandonment

These studies should be expensed and removed from construction in progress

Number 4

Improper recording of revenues described in Note 1T as a significant Accounting Policy called "Punch Cards Utilized" and in Note 18 as a Segment Information and failure to disclose the resulting cash interfund transfers in Note 7 and required payments to parcel owners that have no Beach access.

This accounting scheme was initiated in fiscal year 2013 to increase noncash charges for services (revenues) in the Beach Fund (through 6/30/2014) and the Beach Special Revenue Fund (effective 7/1/2016 ("BSRF") and subsequently offset 100 % of those revenues by a contra revenue charge in the Community Service Fund (through 6/30/2014) and the Community Services Special Revenue Fund (effective 7/1/2016 ("CSSRF"), resulting in a cash transfers of approximately $2,230,000 since 2013. In fiscal year 2019 $468,000 was transferred from the CSSRF to the BSRF.

As a result for fiscal year 2019 revenue from charges for services of the BSRF have been overstated by 43% and correspondingly revenues from charges for services of the CSSRF has been understated by 3.7%.

In addition, based on the May 22, 2019 board resolution 1871, a total of 455 parcel owners have been charged a facility fee which allows the use of only Community Services venues but their share of those facility fees have been transferred to the Beach venues in which they do not participate. These parcel owners represent 5.55% of all parcel owners and their share of the facility fee paid or $26,000 ($468,000 X 5.55%) has been transferred to the Beaches. Since 2013 $124,000 of revenues from parcel owners not participating in the Beach venues have been transferred to the Beach Fund.

No revenues should have been recognized as the value of each punch card had been paid and recorded as revenues when the Recreation Facility Fee and Beach Fee was paid. No revenues were created by subsequently using a punch card to obtain a lower charge for services (user fees) at the recreational venues. This accounting scheme is a double booking of revenues with unrelated contra revenue offsets.

At the December 16, 2015 IVGID Audit Committee meeting, Mr. Dan Carter, provided answers to the Committee members questions, which indicate he did not have an understanding of what false accounting was transpiring and stated that IVGID had a policy for the accounting. There is no policy.

According to GASB #34 paragraph 122 Segment Information in Financial Statement Notes should be used only for enterprise funds. The CCRS and BSRF are not enterprise funds.

EideBailly must provide an opinion on the validity of the accounting and reporting complying with Nevada law, GAAP and GASB for "Punch Cards Utilized" transactions.

Number 5

Unallowable transfer of Funds for Central Services Cost Allocations. (Note 1S) (CAFR page 42)

Since July 1, 2015 certain unlawful transfers have been made from the Community Services Special Revenue Fund (CSSRF) and the Beach Special Revenue Fund (BSRF)to the General Fund based on provisions of NRS 354.613 subsection C and Board of Trustee Policy 18.1.0. Both the NRS and Board Policy only relate to Enterprise Funds. Both the CSSRF and the BSRF are governmental funds not enterprise Funds.

After a September 23, 2019 letter from Clifford F. Dobler and Linda Newman, Incline Village citizens, expressing concern about the illegal transfers made based on the above NRS and Board Policy, the IVGID Director of Finance, Gerald Eick, indicated in a memorandum to the IVGID Audit Committee dated November 27, 2019 that the transfers were made based on "following State guidance to share defined costs in the General Fund between operating governmental and enterprise funds." A subsequent public records request revealed that IVGID cannot produce the State Guidance. There is also no evidence that the Auditors opined.

Since July 1, 2015 and including the budget for fiscal 2020, a staggering $3,874,900 has been transferred from the CSSRF and the BSRF to the General Fund under the guise of Central Services Cost Allocations.

Several Basic Financial Statements will require restatement if the Central Services Cost Allocations were not allowed.

A written opinion from EideBailly must be obtained.

Number 6

Use of a false assertion to record Utility Fund deferred revenues (unearned) of $433,980 as current revenues in the Proprietary Funds - Statement of Revenues, Expenditures and Changes in Net Position (CAFR page 31) causing an increase in Net Position on Proprietary Funds - Statement of Net Position (CAFR page 30.

IVGID currently bills customers monthly in advance a minimum base rate for water and sewer service which will be delivered in the subsequent month. The billings are recorded as a receivable but a portion of the billing has historically been deferred and recorded as unearned revenue because the base rate is billed in advance of the services being provided.

In fiscal year 2019, Mr. Eick, Director of Finance, decided on his own, that the advanced billings of base water and sewer rate should be considered current revenues based on a false assertion that base rates are a "non-exchange transaction" because the billing components are not tied to the receipt of any quantity of water and sewer services" (item #4 of Memorandum dated November 27, 2019 from Gerald W. Eick to the IVGID Audit Committee).

The base rates for water and sewer services are charged to customers in EXCHANGE for providing a future service and could not be considered as a tax, a fine, or donations which are examples of NON EXCHANGE TRANSACTIONS. Mr. Eick's narrative is NOT A LOGICAL EXPLAINATION FOR NO LONGER DEFFERING BASE RATES BILLED IN ADVANCE

Apparently during the course of the audit performed by Eide Bailly L.P. (Auditor) this change in accounting was discovered by the Auditor and considered the change to be a misstatement. Rather than correct the misstatement, Mr. Eick and Lori Pommerenck, Controller, provided the following statement in the Management Representation Letter to Auditor dated November 18, 2019:

"The effects of the uncorrected misstatement below aggregated by you during the current engagement is immaterial, both individually and in the aggregate, to the applicable opinion units and to the financial statements as a whole:

Revenues	417,402	
Net Position		417,402

To pass on recording the prior year impact to revenue for nonexchange fees billed in advance

It is quite apparent, the decision NOT to correct the misstatement was by IVGID management and the Auditor may be seeking legal protection through reliance on Managements representatons.

Also note the amounts used in the Memorandum to the Audit Committee and the Representation Letter to the Auditor do not agree and are different by $16,578. How is it possible that the Memorandum to the Audit Committee dated November 27, 2019 would have different amounts than the CAFR and Representation Letter delivered on November 18, 2019?

Materiality is not the issue as Utility Fund revenues have been overstated by only 3.4%. The false assertion created by Mr. EICK was delineated in the Memorandum to the Audit Committee involving EideBailly which stated:"However further discussions with the Auditors found a more compelling factor is that they are a non exchange transaction because the billing components are not tied to the receipt of any quantity of water or sewer services."

Question for EideBailly - Are advanced billings for basic water and sewer services considered a non exchange transaction and if so why would that matter on not deferring advanced billing?

Number 7

Incorrect statements and failure to report all commitments in Note 19 - Commitments Affecting Future Periods (CAFR pages 54-55), and failure to report contractual arrangements as committed fund balance on the Balance Sheet of Governmental Funds.

- Capital Improvement Project Budget Carryover -

The following projects had committed Budgets outstanding but were not included

Incline Park Facility Renovation - $1,174,741 affecting Community Service

Purchase of Vactor Truck - $416,564 affecting Utility Fund

Incline Creek Park Restoration - Amount of the carryover should be $303,895 which is the unspent amount of two contracts. Only $214,000 was included in the project carryover thus understating the carry over amount by $89,895.

- The District has committed to these contractual arrangements for capital improvement projects-

Failure to report a roofing contract with Kodiak Roofing & Waterproofing dated 9/13/2017 for $77,535. Work on the contract did not start until September 2019. The contract amount was included as a Capital Improvement Project budget carryover.

NOTE: The contracts reported in this section plus the contract above relating to governmental funds should be reported as a committed fund balance on the Balance Sheet (CAFR page 23) Total amount $1,685,966

GASB Statement #54 paragraph 10 provides the requirements for Committed Fund Balance

"Amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the government's highest level of decision-making authority should be reported as committed fund balance"

> The specific purpose would be the future contract costs. There is no longer intent to be an "Assigned" fund balance as an obligation was created.
>
> The constraints imposed would be approval of the contracts by IVGID Board of Trustees (they being the highest level of decision-making authority)

- Budgeting for Fiscal Year Ending June 30, 2020

The General Fund 2019/2020 Budget provided for a TRANSFER of fund to the Community Services Special Revenue Fund for only $561,800 and DID NOT include a transfer of $145,000 in contingency. These transfers violate NRS 354.6117, as the funds were specified for the Mountain Golf Course Clubhouse Renovation. The $788,870 transfer exceeds the limitation imposed in NRS 354.6117 which is 10% of the total amount of the budgeted expenditures of the general fund.

The narrative fails to address the actual Fund name.

According to the narrative a total of $4,037,091 of accumulated resources in the Community Services Special Revenue Fund and $625,729 in the Beach Special Revenue fund will be used for capital projects in direct violation of GASB Statement #54 paragraph 30

As Stated: "*Special revenue funds are used to account for and report the proceeds of specific revenue sources that are restricted or committed to expenditures for specified purposes other than debt service or capital projects*".

Note: Separate capital project and debt service funds for the Community Services venues and the Beach venues were established by Resolution by the Board of Trustees effective July 1, 2015 and were discontinued as stated in the Letter of Transmittal (page 4) of the CAFR. Disclosure in the Notes to the Financial Statements would be required.

EdieBailly must opine on apparent non compliance with GASB #54

Number 8

Improper Classification of Revenues in the Statement of Activities for the year ended June 30, 2019 (CAFR page 22)

A. The Statement of Activities lists $1,169,000 as Program Revenues -Charges for Services as received by the General Fund. These charges were generated by Central Services Cost Allocations (which may have been illegal transfers).

These charges are not revenues but reduction of expenses as indicated in the Governmental Funds Fund Statement of Revenues and Expenses (CAFR - page 25) and the General Fund Statement of Revenues, Expenditures and Changes in Fund Balance (CAFR - page 27).

B. The Statement of Activities also lists Facilities Fees of $6,756,410 as General revenues of Governmental activities. The Facility Fees are NOT General revenues but are fees charged to parcel owners for the specific use of making facilities available for all Community Services and Beach recreational venues. These Facility Fees are not general revenues but are specific revenues for the two funds mentioned aove.

The Facilities Fees are authorized to be collected by NRS 354.197 as fees (charges for services) for specific purposes.

The Facility Fees must be listed as a Program Revenues under Charges for Services for the Community Services and the Beach and must be reclassified.

C. The Internal Services fund has been named Fleet, Engineering, Bldgs. & Workman's Comp apparently to confuse the reader and should be corrected.

Number 9

Failure to report a grant for the Incline Park Ball Fields

Failure to report a major grant of $1,409,201 from the Incline-Tahoe Parks and Recreation Vision Foundation, Inc. via a Memorandum of Understanding dated March 18, 2019, as a Grant Receivable and also a Deferred Revenue (possibly a current revenue) which effects the Statement of Net Position (CAFR page 21 and the Balance Sheet (CAFR page 23). GASB #33 (paragraph 19, 20, 21) clearly states that once all of four eligibility requirements are satisfied (there is no time limit) the grant commitment should be recorded as a receivable and as a revenues even thought expenditures have not occurred.

The $1,298,341 construction contract for the Ball fields project was issued in May, 2019 and was disclosed as a contractual arrangement in Note 19, however, was NOT included the **Capital Improvement Project Budget Carryover** section of Note 19.

EdieBailly should provide an opinion on compliance with GASB #34 regarding accounting treatment for this grant.

Number 10

Mountain Golf Course Clubhouse Fire Damage Short Term Rehabilitation

Improper classification of temporary fire damage repairs as construction in progress rather than an operating expense

Fire damage repairs of $150,751 were completed on the interior of the Mountain Golf Course Clubhouse during fiscal 2019 in order to operate the facility for the 2019 golf season and thereafter would be abandoned as a complete renovation of the exterior and interior of the facility would begin in September 2019. These repairs were recorded as construction in progress. On August 14, 2019, contracts, staff time and a contingency budget for $1,192,000 was approved by the Board of Trustees for a complete renovation of the facility.

The fire damage repairs must be removed from Construction in Progress and charged off as an expense. There was never an intend to extend the life of these repairs past the 4 month golf season.

There are several financial statements which will have to be restated together with Management Discussion and Analysis

Note 11

Failure to disclose major leases with the U. S Department of Agriculture Forest Service and Parasol Foundation Inc. in Note 16 - Lease Obligations (CAFR page 53)

IVGID has a Special Use Permit (effectively a lease) dated 7/17/2014 with the following basic terms:

361 acres of National Forest Service Land is leased to IVGID which is 49% of the Diamond Peak Ski area

Expires on 12/23/2023

Permit is not renewable

New permit is required. Sole discretion of Forest Service

Land use fees are various percentages based on 49% of the adjusted gross income from sales of Alpine and Nordic lift tickets, passes and ski school operations.

Monthly payments are required if previous year payments exceed $10,000

Total payment in fiscal year 2019 is unknown.

IVGID leases 2.35 acres of land which IVGID owns to the Parasol Foundation Inc. who constructed a 31,500 square foot building with a grant from an outside donor.

The lease was executed 1/12/2000

The lease is for 30 years with 3 options for 10 years each

The lease is for $1 per year

Only charities/non profits can occupy the building

Parasol must maintain a $1,325,000 replacement endowment account during term of the lease

Parasol must keep the building substantially occupied during term of the lease

THE LAND WAS APPRAISED FOR $1,000,000 ON JULY 7, 2017

Number 12

False statement in Note 1P Significant Accounting Policies to Financial Statements relating to Fund Balance

Note 1P (CAFR page 41) regarding information provided on Fund Balance which states:

"An assigned fund balance can be specified by the District's General Manager"

It is quite unclear what that statement actually means. A reader may conclude that the $14,036,495 reported as an assigned fund balance for the Community Services and Beach Special Revenue Funds (CAFR page 23) may have been given to the General Manager to be used as that person sees fit.

GASB # 54 paragraph 13 states there are three choices who would determine intent to have a Fund Balance Assigned

a) the governing body itself

b) a body (a budget or finance committee)

or official to which the governing body has delegated the authority to assign amounts to be used for specific purposes

There is no Board Policy or practice which would support the statement made in Note 1P and it should be removed.

Number 13

Failure to report committed amounts of the fund balance for the Community Service Special Revenue Fund on the Governmental Funds Balance Sheet as of June 30, 2019 (CAFR page 23) to reflect commitments for three construction contracts executed in fiscal year 2020.

Three construction contracts for $ $1,608,341 as disclosed in Note 19 (CAFR page 55) were budgeted and executed in fiscal year 2019, however, construction was not started. As such, the fund balance of the Community Services Special Revenue Fund should reflect the commitment of the Fund Balance for these contracts.

In addition, a contract for $77,535 executed on 9/13/2017 for replacing the roof at the Mountain Golf Course Clubhouse was outstanding at June 30, 2019. Construction did not commence until September, 2019. This contract should be also included in Note 19.

GASB Statement #54 paragraph 10 provides the requirements for Committed Fund Balance

"Amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the government's highest level of decision-making authority should be reported as committed fund balance"

The specific purpose would be the future contract costs (there is no longer intent to be an "Assigned" balance as an obligation was created.

The constraints imposed would be approval of the contracts by IVGID Board of Trustees (they being the highest level of decision-making authority)

"Committed fund balance also should incorporate contractual obligations to the extent that existing resources in the fund have been specifically committed for use in satisfying those contractual requirements."

Number 14

Improper reporting of Notes to Financial Statements

The Notes to Financial Statements - Index (page 34) lists Note 1E as Budgets and Budgetary Accounting yet Note 1E in the text (page 37) states: Compliance with Nevada Revised Statutes and Nevada Administrative Code.

This error needs correction.

e. May 2, 2020 e-mail communication regarding the Engagement Letter, the Audit Committee charter and communications from Mr. Dick Warren (3 pages)

From: Dick Warren <bd1947@icloud.com>
Sent: Saturday, May 2, 2020 4:15 PM
To: Paul C. Navazio
Cc: Matthew Dent; Tim Callicrate; Sara Schmitz; Winquest, Indra S.
Subject: AC Meeting May 6th - Item D3, Engagement Letter

I must admit I was a little bit surprised to find these 2 paragraphs (below in bold) in your memorandum to the AC, found on pages 32 & 33.

The first para, why are you asking Eide Bailly to prepare the financials? IVGID has prepared these for years, why are you asking Eide Bailly to prepare them this year? Not only does the cost increase, but what is the added value?

The second para (I have already commented on this in an earlier email today as a potential conflict of interest for Eide Bailly), why would you want Eide Bailly to be a Financial Advisor to the AC? This is the same firm that did last year's CAFR (FY 2019), and the Board sent it on to the Department of Taxation with 14 potential issues relating to Eide Bailly. Why would you want Eide Bailly to be your Financial Advisor when you just questioned their competence in last year's audit? And let's be honest, Eide Bailly has been an issue for the past 4 years.

Anyway, these 2 requests by Staff I find to be perplexing; hopefully, you can mollify my concerns.

First, staff suggests that the Audit Committee *give* consideration to amending the Engagement Letter to request that the Independent Auditor prepare the financial statements to be include in the Consolidated Annual Financial Report. Historically, the financial statements have been prepared by management staff and *reviewed* by the Independent Auditor. This task would result in an increase to the fee(s) charged for the *overall* audit.
In addition, the Audit Committee - in conjunction with its update to Board Policy 15.1.0 - may choose to request that the Independent Auditor be retained to *serve* as a resource to the newly- reconstituted Audit Committee. The draft revision to Board Policy 15.1.0 (also appearing on this Committee Agenda), identifies a role for an individual or entity to provide background and training to Committee members as well as serve as a resource to members to support the Committee in fulfilling its oversight role related to finance, accounting, financial reporting and internal controls. This potential role for the Independent Auditor is currently outside the scope of the Engagement Letter for the FY2019-20 audit work.

From: Sara Schmitz
Sent: Monday, May 4, 2020 5:48 PM
To: Herron, Susan
Subject: Fw: Audit Committee (AC) Meeting, May 6th - Item D2, the AC Charter

Sara Schmitz
Incline Village General Improvement District Trustee and Treasurer
893 Southwood Blvd.
Incline Village, NV 89451
925-858-4384

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

From: Dick Warren <bd1947@icloud.com>
Sent: Saturday, May 2, 2020 1:00 PM
To: Matthew Dent; Tim Callicrate; Sara Schmitz
Cc: Winquest, Indra S.; Paul C. Navazio
Subject: Audit Committee (AC) Meeting, May 6th - Item D2, the AC Charter

A couple of comments:

Page 16 - First paragraph under Organization, last sentence - How can you have a Financial Advisor who is affiliated with the external audit firm? The external audit firm does not give an opinion on IVGID's internal controls, but they do need to review and determine their level of auditing procedures necessary based on their assessment of IVGID's internal controls. I think this could be a potential conflict for the external audit firm, it might be better to keep the Financial Advisor totally independent of the external audit firm. From a practical sense, wouldn't the best fit for Financial Advisor be the Consultant you use for your Internal Control Review?

Materiality - I might have missed it, but is materiality of financial transactions discussed in the Charter? The GM has a certain level of approval, $50k or so. Since the AC is responsible for financial reporting, shouldn't "significant financial transactions", above the level authorized for the GM, be brought to the AC for their review & approval?

From: Sara Schmitz
Sent: Monday, May 4, 2020 5:47 PM
To: Herron, Susan
Subject: Fw: AC Meeting May 6th - Item D4 Communications, 3 Items

Sara Schmitz
Incline Village General Improvement District Trustee and Treasurer
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Incline Village, NV 89451
925-858-4384

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

From: Dick Warren <bd1947@icloud.com>
Sent: Saturday, May 2, 2020 6:38 PM
To: Matthew Dent; Tim Callicrate; Sara Schmitz
Cc: Winquest, Indra S.; Paul C. Navazio
Subject: AC Meeting May 6th - Item D4 Communications, 3 Items

Re Items 4A & 4C, the Nike slogan "JUST DO IT" comes to mind. - Linda & Cliff have persuasively laid out their arguments, and there has been no rebuttal to them. Item 4C is particularly unsettling, since if IVGID continues to use Special Revenue Fund Accounting they are in violation of the law.

Re Item 4B, Dillon's Rule, if an organization like IVGID had a competent internal control function (external or internal), this issue would go away quickly.