

MEMORANDUM

TO: Audit Committee

THROUGH: Matt Dent

FROM: Clifford F. Dobler

SUBJECT: Can "Community Programming" activities be provided by IVGID if not specifically expressed in Nevada Revised Statutes as required by Dillon's Rule?

STRATEGIC

PLAN REFERENCE(S): None

DATE: 11-30-2020

I. RECOMMENDATION

That the Audit Committee makes a motion recommending to the IVGID Board of Trustees to proceed immediately with submitting a petition to be filed with the District Court in Washoe County to obtain a judicial examination and determination of the validity of the power to provide "Community Programming" to customers as a GID.

Authority to submit a petition to District Court

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

1. In its discretion the governing body may file or cause to be filed a petition at any time in the district court in and for any county in which the municipality is located or any act or project is undertaken, wholly or in part, praying a judicial examination and determination of the validity of any power conferred or of any instrument, act or project of the municipality, whether or not such power has been exercised, such

instrument has been executed or otherwise made or such act or project has been taken.

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

(Added to NRS by 1969, 135)

II. CAUSE FOR FAIR AND REASONABLE DOUBT

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

NRS Chapter 318 provides clear evidence that Community Programming (personal services) was not expressly contemplated when establishing the basic powers for the Incline Village General Improvement District. NRS Chapter 318.100 and 318.116

Legislative declarations (NRS 318.015) dictate that *the powers granted will service a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants*. The basic powers granted to IVGID is to only operate, maintain and repair improvements and furnish facilities which would probably achieve the goals of NRS 318.015 above.

Liberal construction (NRS 318.040) states that *the necessity to secure the public health, safety, convenience and welfare it shall be liberally construed to effect its purposes*. Would Community Programming be a necessity to effect the purposes of furnishing facilities?.

Based on NO expressed authority to provide Community Programming in NRS Chapter 318, a general improvement district MAY NOT have

the power to provide citizens an array of personalized services. Such powers to provide personalized services could only be drawn from NRS 318.210 wherein such services could be *necessary*, or *incidental* or *implied* from the specific (basic) powers granted and defined in NRS 318.100 and 318.116. Since the expressed powers are limited to furnishing and servicing improvements or facilities, providing personalized services as outlined below probably would not be **necessary or incidental or implied.**

III. SUMMARY OF IVGID'S COMMUNITY PROGRAMMING

Community Programming consists of variety of services for individuals as opposed to services required to provide the availability of use of the several recreational venues. The District currently provides 80 different programs in and around the Recreation Center and Beaches and also provides Community Programming at the two Golf Courses and the Diamond Peak Ski Resort, however, the number of programs, financial support and extent of the programs are not known at this time

Based on the 2020/2021 Budget (Workshop on 5-7-2020) the 80 programs are in the following broad categories and require an annual subsidy of the Recreation Facility Fee

Youth & Family	9	Rec Facility Fee Support	- \$112,197
Youth & Family Sports	10	Rec Facility Fee Support	- \$101,511
Seniors	11	Rec Facility Fee Support	- \$184,447
Adult Sports	10	Rec Facility Fee Support	- None
Rec Center Aquatics	16	Rec Facility Fee Support	- \$344,489
Rec Center Fitness	11	Rec Facility Fee Support	- \$235,807
Rec Center Kid Zone	1	Rec Facility Fee Support	- \$58,194
		Total	\$1,036,645

IV EXPRESSED POWERS GRANTED TO IVGID UNDER NRS CHAPTER 318

Within NRS 318, IVGID does NOT have the expressed power to provide Community Programming and the powers appear limited to only improvements and facilities.

- The Basic Power of the IVGID board is for acquisition, construction or servicing of improvements which can be found in NRS 318.100
- The Basic powers actually granted to IVGID can be found in 318.116 and consist of 4 of the 21 powers which can be granted in proceedings for the organization of a GID. The four IVGID powers are:
 - #11 Furnishing facilities for sewerage
 - #13 Furnishing facilities for the collection and disposal of garbage and refuse
 - #14 Furnishing recreation facilities -details of type of facilities in NRS 318.143
 - #15 Furnishing facilities for water
- Under 318.145, The Board shall have to power to operate, maintain, and repair the improvements and all facilities of the district relating to any basic power granted and in addition to exercise from time to time any one, all or any combination of the incidental powers provided in this chapter.
- Under NRS 318.210 the Board shall have and exercise all rights and powers necessary or incidental or implied from the specific powers granted in this Chapter (318). Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this Chapter(318)

V. **ANNUAL RESOLUTION ADOPTING THE COLLECTION OF RECREATION STANDBY AND SERVICES CHARGES (KNOWN AS THE RECREATION FACILITY FEE AND BEACH FACILITY FEE)**

The Board of Trustees approves "*a report on recreation revenue charges to be collected for the fiscal year for the use of Burnt Cedar and Incline Beaches as well as the availability of use of the Incline Village Championship and Mountain Golf Courses, Diamond Peak, and other recreational and facilities for the District and its people.*"

This statement indicates the Board of Trustees intention to provide resources for only the use of various recreational facilities and not to be used for Community Programming.

VI. **BACKGROUND**

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

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

On September 2, 2020 Mr. Nelson's June presentation was again reviewed by the Audit Committee. According to meeting minutes the Audit Committee purported to request that Mr. Nelson provide a written opinion on his conclusions regarding the questioned expenditures and the opinion could then be posted on the District's website. Mr. Nelson requested that he provide his written opinion to the Audit Committee prior to the Audit Committee requesting an opinion from the Nevada Attorney General.

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

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

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

VII. BID RESULTS

Not required

VIII. FINANCIAL IMPACT AND BUDGET

Unknown

IX. ALTERNATIVES

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

SUBJECT

-7-

DATE

X. COMMENTS

XI STRATEGIC PLAN REFERENCE(S)

None

VIII. BUSINESS IMPACT

None.

or