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OPINION NO. 2011-03

EXECUTIVE DIRECTOR; FUNDS;
VETERANS: Nevada Office of Veterans Services is authorized to utilize funds from the Gift Account for Veterans, as administered by the Executive Director, for the design and remodel project at the Nevada State Veterans Home in Boulder City.

Caleb Cage, Executive Director
Nevada Office of Veterans Services
5460 Reno Corporate Dr., #131
Reno, Nevada 89511

Dear Mr. Cage:

Your office has requested an opinion concerning the Executive Director's authority over the Gift Account for Veterans (Account) as delineated in NRS 417.145(8), and whether or not the Nevada Office of Veterans Services (NOVS) is allowed to use these funds for a design and remodel project at the Nevada State Veterans Home in Boulder City.

QUESTION ONE

Does NRS 417.145(8) designate the NOVS Executive Director as the person responsible for making decisions relative to how the money in this Account will be spent?

ANALYSIS

The NOVS Executive Director serves as the Director of the Office of Veterans' Services and is responsible for the performance of duties imposed upon the Office, and for such other duties as may be prescribed by NRS Chapter 417. NRS 417.020(3). One of the Executive Director's duties is to administer the accounts referenced in NRS 417.145. NRS 417.145 sets forth the administration of the Veterans' Home Account, the Gift Account for Veterans' Homes and the Gift Account for Veterans. NRS 417.145(8) reads, in pertinent part:

The Gift Account for Veterans is hereby created in the State General Fund. The Executive Director shall administer the Gift Account for Veterans. The money deposited in the Gift Account for Veterans pursuant to NRS 482.3764 may only be used for the support of outreach programs and services for veterans and their families. . . .

The Nevada Supreme Court has stated that when "the words of the statute have a definite and ordinary meaning, this court will not look beyond the plain language of the statute, unless it is clear that this meaning was not intended." *Harris Associates v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). The Court has further opined, "We have stated that 'words in a statute will generally be given their plain meaning, unless such a reading violates the spirit of the act, and when a statute is clear on its face, courts may not go beyond the statute's language to consider legislative intent.'" *Meridian Gold Co. v. State ex. Rel. Dep't of Taxation*, 119 Nev. 630, 633, 81 P.3d 516, 518 (2003), (quoting *Pellegrini v. State*, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001)).

It is clear from the plain meaning of the statute that the Executive Director administers the Account. Chapter 417 dictates that the Executive Director is tasked with the duty to assist veterans and their dependants, as well as those currently serving in the military and naval forces of the United States who are residents of the State of Nevada. Administering the Account is within the sole purview of the Executive Director.

CONCLUSION TO QUESTION ONE

Pursuant to NRS 417.145(8), the NOVS Executive Director is the person responsible for making decisions relative to how the money in the Account will be spent.

QUESTION TWO

Does NRS 417.145(8) limit NOVS's ability to utilize funds from the Account for a design and remodel project at the Nevada State Veterans Home in Boulder City in any way?

ANALYSIS

The pertinent section of NRS 417.145(8) reads as follows: "The money deposited in the Gift Account for Veterans pursuant to NRS 482.3764 may only be used for the support of outreach programs and services for veterans and their families."

Because NRS 417.145(8) does not specifically define what fits within the realm of "outreach programs and services for veterans and their families," the statute is subject to more than one interpretation and may be considered ambiguous. *UMC Physicians' Barg. Unit of Nev. Serv. Employees Union v. Nev. Serv. Employees Union*, 124 Nev. _____, 178 P.3d 709, 712 (2008).

NRS 417.145(8) states that the money deposited in the Account pursuant to NRS 482.3764 may only be used for the "support of outreach programs and services for veterans and their families."¹ Monies deposited into the Account pursuant to NRS 482.3764 are from veteran's license plate money collected by the Department of Motor Vehicles. NRS 482.3764(1)(a)(1) specifically states that the special fee collected for these license plates will be used for "the support of outreach programs and services for veterans and their families" The Account has been in existence in Nevada since 2007. Act of May 30, 2007, ch. 209, § 1, 2007 Nev. Stat. 669, (S.B. 219).

In his letter addressed to this office, Mr. Timothy Tetz, former Executive Director to NOVS, states that the use of the words "outreach programs and services" in the legislation was intended to cover all business conducted by the agency. According to Mr. Tetz, NOVS has consistently marketed its three programs as the Veterans Service Officer "program," Veterans Memorial Cemetery "program," and State Veterans Home "program." NOVS's services also include veterans' advocacy and benefits assistance, burial assistance, and nursing home care.

Mr. Tetz's letter further states that the NOVS Budget Analyst is now concerned that NOVS's use of the Account funds for a design and remodel project at the Nevada State Veterans Home in Boulder City may not be authorized by NRS 417.145(8). Mr. Tetz believes this project will enhance the services NOVS provides to Nevada veterans, spouses of veterans, and their families.

The Nevada Supreme Court has stated: "If the statutory language is ambiguous or does not address the issue before us, we must discern the Legislature's intent and construe the statute according to that which 'reason and public policy would indicate the legislature intended.'" *Sandoval v. Bd. of Regents*, 119 Nev. 148, 153, 67 P.3d 902, 905 (2003) (quoting *State, Dept. of Mtr. Vehicles v. Vezeris*, 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986)). In another case, the Court opined: "If a statute is ambiguous, the plain meaning rule of statutory construction is inapplicable, and the drafter's intent becomes the controlling factor in statutory construction. An ambiguous statutory

¹ It is important to note, however, that money from other sources is also deposited into the account. These monies come from donations by individuals and organizations.

provision should also be interpreted in accordance with what reason and public policy would indicate the legislature intended." *Harris Associates*, 119 Nev. at 642, 81 P.3d at 534 (internal quotations and citations omitted).

The Court gives deference to administrative agencies' interpretations of their own statutes.

[T]his court will not readily disturb an administrative interpretation of statutory language. This court has held that [a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute.

City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002). "[G]reat deference should be given to the [administrative] agency's interpretation when it is within the language of the statute. While the agency's interpretation is not controlling, it is persuasive." *Pyramid Lake Paiute Tribe of Indians v. Washoe County*, 112 Nev. 743, 748, 918 P.2d 697, 700 (1996) (internal quotations and citations omitted).

Mr. Tetz testified that the bill accomplished three tasks: (1) it creates a gift account for veterans, which is only used for the support of outreach programs and services for veterans and their families; (2) it corrects a portion of the NRS and deposits all veterans license plate money into this gift account for veterans; and (3) it corrects the issue that veterans have with the license plate money reverting into the General Fund. *Hearing on S.B. 219 Before the Senate Committee on Human Resources and Education*, 2007 Leg., 74th Sess. 24 (March 16, 2007). Mr. Tetz later testified that in supporting this bill, NOVS envisioned payment for various services it was unable to pay for with its current limited budgets. This included pre-deployment briefings and support for Nevada National Guard, family support while they were being deployed, post-deployment briefings and support, women's veteran outreach, rural veterans outreach, and homeless veterans outreach. *Hearing on S.B. 219 Before the Assembly Committee on Government Affairs*, 2007 Leg., 74th Sess. 3 (April 19, 2007).

NRS 417.145(8) gives the Executive Director the duty to assist veterans and their families who are residents of the State of Nevada by administering an Account used for the support of outreach programs and services. Consistent with that duty, it is within the discretion of the Executive Director, as administrator of this Account pursuant to NRS 417.145(8), to expend funds in the Account for designing and remodeling the Boulder City Nevada State Veterans Home.

CONCLUSION TO QUESTION TWO

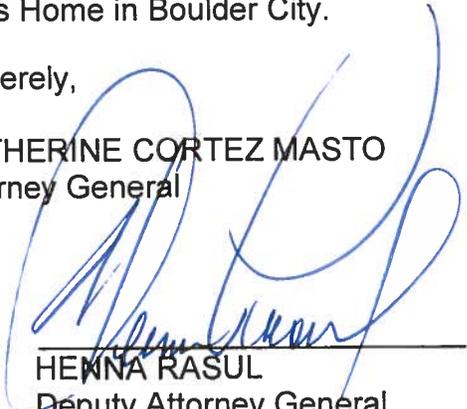
The Executive Director is designated by statute to administer the Account funds. The Account funds, by statute, may only be used for support of outreach programs and services for veterans and their families.

The State Veterans Home is a program marketed by NOVS to further its mission to benefit veterans. Accordingly, NOVS is authorized to utilize funds from the Gift Account for Veterans, as administered by the Executive Director, for the design and remodel project at the Nevada State Veterans Home in Boulder City.

Sincerely,

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By:



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HR:LW