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May 2, 2011

OPINION NO. 2011-05

COUNTIES; SEWER; UTILITIES;
WATER: Nevada law expressly gives counties authority to purchase a water and sewer system within an unincorporated town where the town has no involvement in the transaction.

Michelle M. Jones, Esq.
Deputy District Attorney
Nye County District Attorney's Office
Post Office Box 39
Pahrump, Nevada 89041

Dear Ms. Jones:

You have requested an opinion from this office on behalf of the District Attorney of Nye County, Nevada, concerning the authority of the county to purchase, own, and operate a water/sewer utility.

BACKGROUND

It is our understanding that currently there is a proposed purchase by Nye County of a privately-owned water and sewer utility in Pahrump, Nevada. Nye County would hire the corporate owner to manage the facility under a proposed professional services agreement rather than having Nye County Public Works manage the utility.

QUESTION ONE

May the county purchase a water and sewer system pursuant to NRS 710.410 within an unincorporated town with an elected town board form of government, where the town has no involvement in the transaction, i.e., it will not be purchased on behalf of the town?

ANALYSIS

As the question concerns the purchase of a water and sewer system by Nye County, we begin with the principle that county commissions are administrative agencies of the state and are required to perform such duties as are prescribed by law under NEV. CONST. art. 4, § 26. *State ex rel Ginocchio v. Shaughnessy*, 47 Nev. 129, 217 P. 581 (1923); *City of Las Vegas v. Mack*, 87 Nev. 105, 481 P.2d 396 (1971). Their powers are derived exclusively from legislative acts. Op. Nev. Att'y Gen. No. 19 (June 2, 1997), Op. Nev. Att'y Gen. No. 88 (November 12, 1963). "It is well settled that county commissioners have only such powers as are expressly granted, or as may be necessarily incidental for the purpose of carrying such powers into effect." *State ex rel. King v. Lothrop*, 55 Nev. 405, 408, 36 P.2d 355, 357 (1934). Therefore, we look to state statutes to determine whether the Nevada Legislature has authorized counties to enter into agreements such as those considered herein.

Your request asks specifically if Nye County can purchase a water and sewer system, pursuant to NRS 710.410, within an unincorporated town where the town has no involvement in the transaction. NRS 710.410 authorizes the purchase and construction of, among other things, water and sewage systems by county commissions of unincorporated towns. However, NRS 710.410 applies to the purchase of water and sewage systems by boards of county commissioners acting with regard to the management of the affairs of any unincorporated town within their respective counties rather than the purchase of water and sewage systems by the county. In other words, the county can make the purchase on behalf of the town. Thus as the request contemplates Nye County purchasing the water and sewage system, or its own without benefit to the town, NRS 710.410 is not applicable to the analysis.

Chapter 244 of the Nevada Revised Statutes provides for the governance of counties in Nevada. Several provisions within Chapter 244 are relevant to this analysis. Chapter 244 of the NRS confers upon a board of county commissioners the power to "expend money for any purpose which will provide a substantial benefit to the inhabitants of the county." NRS 244.1505(1). Next, NRS 244.195 broadly authorizes the board of county commissioners "to do and perform all such other acts and things as may be lawful and strictly necessary to the full discharge of the powers and

jurisdiction conferred on the board.” NRS 244.187 authorizes a board of county commissioners to provide adequate, economical and efficient services to the inhabitants of the county and to promote the general welfare of the inhabitants, displace or limit competition in the area of water and sewage treatment. Further, NRS 244.157 provides “[t]he board of county commissioners of any county of this state may exercise any of the powers in any unincorporated area within its county that a board of trustees of any general improvement district, if organized, would be permitted to exercise pursuant to the provisions of chapter 318 of NRS.” NRS 244.157(1). In addition, a board of county commissioners may exercise these powers only upon compliance with the same procedures a board of trustees of a general improvement district would be required to follow for the same class of improvements within an improvement district. NRS 244.157(2).

In accordance with NRS 244.157, we now turn to Chapter 318 of the NRS to determine what powers a board of trustees of a general improvement district is permitted to exercise in order to determine the scope of the board of county commissioners’ authority. NRS 318.116 sets forth the basic powers that may be granted to a general improvement district. NRS 318.116(11) specifically provides that a district may furnish sanitary facilities for sewage as provided in NRS 318.140, and NRS 318.116(15) specifically provides that a district may furnish facilities for water as provided in NRS 318.144. Further, NRS 318.140(1)(a) provides, among other things, that a board of trustees of a general improvement district may “[c]onstruct, reconstruct, improve or extend the sanitary sewer system or any part thereof, including, without limitation, mains, laterals, wyes, tees, meters and collection, treatment and disposal plants.” Next, turning to NRS 318.144(1), a board of trustees of a general improvement district “may acquire, construct, reconstruct, improve, extend or better a works, system or facilities for the supply, storage and distribution of water for private and public purposes.” Clearly, as demonstrated above, the Nevada Revised Statutes contain several provisions that authorize a county to purchase a water and sewer system within an unincorporated town.

CONCLUSION TO QUESTION ONE

Counties, as agencies of the State, derive their powers exclusively from legislative acts. Nevada law expressly gives counties authority to purchase a water and sewer system within an unincorporated town where the town has no involvement in the transaction.

QUESTION TWO

Can the Board of County Commissioners charge utility customers a fee to support a professional services agreement for the management of such a utility?

ANALYSIS

The analysis you submitted with question two references NRS 710.590 and concludes that charging customers a contract management fee would be considered "further compensation" in violation of NRS 710.590. NRS 710.590 provides "[t]he county commissioners and the county treasurers of the several counties shall perform all the duties required of them under the provisions of NRS 710.400–.580, inclusive, without further compensation as required by law."

The language "without further compensation as required by law" is subject to more than one interpretation and may be considered ambiguous. It is therefore appropriate to turn to the principles of statutory construction to render a determination of the meaning of NRS 710.590. A primary tenet of statutory construction holds that words in a statute are to be given their plain meaning unless this violates the spirit of the act. *Anthony Lee R. v. State*, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997). Courts will look to a dictionary to ascertain the plain meaning ascribed to a word. See generally *Whealon v. Sterling*, 121 Nev. 662, 119 P.3d 1241 (2005).

The word "compensate" is defined as, "[t]o make payment or reparation to." Webster's II New College Dictionary (1999). Thus giving the words in NRS 710.590 their plain meaning, the county commissioners must perform all the duties required under NRS 710.400–.580 without further payment as required by law. The act of charging utility customers a fee to support a professional services agreement for the management of the utility by the board of county commissioners does not equate to the board of county commissioners receiving compensation outside of what is required by the law. The additional fee would compensate the contractor rather than the county commission. Thus NRS 710.590 is not applicable to the circumstances as presented.

As discussed above, NRS 244.157 authorizes a board of county commissioners to exercise any of the powers in any unincorporated areas within its county that a board of trustees of any general improvement district is permitted to exercise pursuant to the provisions of Chapter 318 of the Nevada Revised Statutes. Consequently, the board of county commissioners has the power to furnish facilities for sewage and water in any unincorporated area within the county. See NRS 318.116(11) and (15), NRS 318.140(a), and NRS 318.144(1). Furthermore, pursuant to NRS 318.197(1), the board of county commissioners may fix the rates, tolls, or charges for services

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furnished. Thus Chapter 318 of the Nevada Revised Statutes authorizes the board of county of commissioners to charge fees for the services it furnishes.

CONCLUSION TO QUESTION TWO

The board of county commissioners may charge utility customers a fee to support a professional services agreement for the management of the utility.

Sincerely,

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