



STATE OF NEVADA  
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January 7, 2014

OPINION NO. 2014-01

NEVADA JUNIOR LIVESTOCK SHOW BOARD; SCHOLARSHIPS; INVESTMENT: The Nevada Junior Livestock Show Board may encourage donations to a private nonprofit entity, such as Nevada Agricultural Foundation, for administration and investment.

Matt McKinney, President  
Nevada Junior Livestock Show Board  
P.O. Box 8026  
Reno, Nevada 89507

Dear Mr. McKinney:

You have requested an opinion from the Office of the Attorney General concerning the authority of the Nevada Junior Livestock Show Board (NJLSB) to transfer, to the Nevada Agricultural Foundation (NAF), funds donated to NJLSB for scholarships or other educational assistance to show participants. Funds so transferred would be treated by NAF as a donation to be held by NAF as a conditional endowment. NAF would invest and administer such funds, but NJLSB would continue to select scholarship recipients, and indicate amounts and duration of the awards. NJLSB may also encourage future donations be made to NAF or other similar nonprofit entities for scholarships in support of the Livestock Show.

### QUESTION ONE

May NJLSB transfer funds donated to it for scholarships and other educational assistance to NAF for administration and investment?

### ANALYSIS

NJLSB is created within the Nevada Department of Agriculture and tasked to “have possession and care of all property of the Nevada Junior Livestock Show and the Nevada Youth Livestock and Dairy Show and . . . [is] entrusted with the direction of the entire business and financial affairs of these exhibitions.” NRS 563.010 and 563.080.

NJLSB has received donations and currently holds funds in excess of \$200,000 exclusively for educational scholarships for persons who exhibit livestock at the annual show (the Livestock Show). Although NJLSB’s statute does not expressly authorize it to receive scholarship donations, it is considered an essential and established function of the Livestock Show. Accounts set up to hold such donations have been managed by NJLSB outside the state’s accounting system, a fact which was the subject of testimony before a committee of the 2011 Nevada State Legislature. *Hearing on A.B. 515 Before the Assembly Committee on Ways and Means, 2011 Leg., 76<sup>th</sup> Sess. 10-11 (April 22, 2011).*

Insofar as NJLSB has been entrusted with scholarship funds, NJLSB is subject to the Uniform Prudent Management of Institutional Funds Act (UPMIFA), NRS 164.640–.680. UPMIFA applies to a government agency “to the extent that it holds funds exclusively for a charitable purpose.” NRS 164.653(2). With certain exceptions not applicable here, a fund held by an institution exclusively for a charitable purpose is an “institutional fund.” NRS 164.655. “A charitable purpose” includes educational advancement. NRS 164.645.

Under the foregoing, NJLSB’s management and investment of its institutional fund is subject to UPMIFA. Specifically, UPMIFA sets certain standards for management and investment (NRS 164.665). Further, NRS 164.670 sets forth the authority for the NJLSB to delegate to another entity the management and investment of the investment fund:

1. Subject to any specific limitation set forth in a gift instrument or in law other than NRS 164.640 to 164.680, inclusive, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with

the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (a) Selecting an agent;
- (b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

3. An institution that complies with subsection 1 is not liable for the decisions or actions of an agent to which the function was delegated.

4. By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.

5. An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this State other than NRS 164.640 to 164.680, inclusive.

NJLSB, a state agency, has only such powers as are authorized by the State Legislature. *Clark Cnty Sch. Dist. v. Clark Cnty Classroom Teachers Ass'n*, 115 Nev. 98, 103, 977 P.2d 1008, 1011 (1999). A legislative grant of authority to an agency may be either express or implicit. *State, Dept. of Commerce, Div. of Ins. v. Interocean Risk Sys. Inc.*, 109 Nev. 710, 713, 857 P.2d 3, 5 (1993). "Any enlargement of express powers by implication must be fairly drawn and fairly evident from agency objectives and powers expressly given by the legislature." *Nevada Power Co. v. Eighth Judicial Dist. Court of Nevada ex rel. Cnty of Clark*, 120 Nev. 948, 956, 102 P.3d 578, 584 (2004).

In adopting the UPMIFA, which, as noted above, applies to government agencies to the extent they hold charitable funds, the legislature has expressly granted authority for Nevada government agencies to transfer and invest charitable funds as allowed by NRS 164.670. Thus, NJLSB, an entity holding charitable funds, may transfer such funds to NAF or a similar entity for management and investment.

### CONCLUSION

Subject to specific limitations in the gifts themselves, NJLSB may delegate to an external agent the management and investment of funds donated to it to the extent that NJLSB could prudently delegate under the circumstances. NJLSB shall act in good faith, with the care that an ordinarily prudent person would exercise under similar circumstances, and subject to the other particular requirements set forth in NRS 164.670.

### QUESTION TWO

If a nonprofit entity, such as NAF, establishes its own scholarship fund for receiving future donations from third parties for the benefit of the Livestock Show, may NJLSB encourage future donations to that scholarship fund?

### ANALYSIS

As discussed above, NJLSB currently holds funds donated by third parties for the Livestock Show and may choose to delegate management and investment of those funds. Further, NJLSB would like to explore the option of encouraging future donations to be made directly to a separate nonprofit institution, with the Livestock Show as the named beneficiary.

As noted in response to question one, NJLSB, a state agency, has only such powers as are authorized by the State Legislature. The authority to receive donations of scholarship funds in support of the Livestock Show is not expressly stated in NJLSB's statutes, but rather comes within the general grant of authority found in NRS 563.080(1), which states, "The Board shall have possession and care of all property of the Nevada Junior Livestock Show and the Nevada Youth Livestock and Dairy Show and shall be entrusted with the direction of the entire business and financial affairs of these exhibitions."

The broad authority of NJLSB under NRS 563.080(1), which entrusts it with the "direction of the entire business and financial affairs of the shows," would also allow it to encourage private support for the shows through the vehicle of donations to a private nonprofit entity for the benefit of the show, through scholarships.

Support for this authority is further found in the legislative history of Assembly Bill 515 (2011):

ASSEMBLY BILL 515 (1st Reprint): Revises certain provisions governing the Nevada Junior Livestock Show

Board. (BDR 50-1208)

JIM R. BARBEE (Acting Director, State Department of Agriculture): Assembly Bill 515 is a cleanup measure in our budget accounts. *The intent is to remove the General Fund budget for the Nevada Junior Livestock Show Board (NJLS) account and allow them to utilize a separate nonprofit organization 501(c)(3) of the Internal Revenue Code filing allowing them to receive community support to fund that activity.* In addition, certain language relative to the Board is being cleaned up. The NJLS Board is also in support of this legislation.

*Hearing on A.B. 515 before the Senate Committee on Finance, 2011 Leg., 76<sup>th</sup> Sess. 8 (June 3, 2011) (emphasis added).*

Mr. Barbee said it was important to note that some of the outside accounts that had been identified were for scholarship memorials and purposes along those lines. It seemed impractical to bring those outside accounts into the state accounting system. Based upon discussions with the Budget Division, the Livestock Show Board members, and the Nevada Department of Agriculture, they had agreed to eliminate budget account (BA) 4980 and *allow the use of outside accounts and community support to fund the Livestock Show.* Mr. Barbee maintained this action would simplify agriculture budgets for the Budget Division and the agency as well as providing the Livestock Show a better opportunity to facilitate fundraising.

*Hearing on A.B. 515 before the Assembly Committee on Ways and Means, 2011 Leg., 76th Sess. 10–11 (April 22, 2011) (emphasis added).*

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CONCLUSION

NJLSB may encourage donations to a private nonprofit entity, such as NAF, for scholarship donations for the benefit of the Livestock Show.

Sincerely,

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Attorney General

By:



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