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OPINION NO. 2020-01

OFFICE OF THE TREASURER;
SALARIES; FUNDS FOR PAYMENT: While Article 17, § 5 of the Nevada Constitution requires that the State Treasurer's salary be paid from the Nevada State Treasury, the Treasurer's salary may be drawn from any account within the State Treasury so long as applicable statutes, regulations or contractual obligations do not encumber or restrict the use of the funds in a way that would be incompatible with such payment.

The Honorable Zachary Conine
Nevada State Treasurer
101 N. Carson Street, Suite #4
Carson City, Nevada 89701

Dear Mr. Conine:

In your capacity as Nevada State Treasurer (Treasurer), you have requested an opinion from the Office of the Attorney General regarding the source of public funds from which the Treasurer's salary must be paid. Although Article 17, § 5 of the Nevada Constitution requires payment of the Treasurer's salary from the Nevada State Treasury (State Treasury), this provision does not require that the Treasurer's salary be drawn from the general fund as opposed to some other account within the State Treasury.

QUESTION

Insofar as Article 17, § 5 of the Nevada Constitution requires that the Treasurer's salary be drawn from the State Treasury, must payment be from the general fund of the State Treasury, or may it be made from another State Treasury account when otherwise authorized by law?

SUMMARY CONCLUSION

The Treasurer's salary may be drawn from any account within the State Treasury so long as applicable statutes, regulations or contractual obligations do not encumber or restrict the use of the funds in a way that would be incompatible with payment of the Treasurer's salary.

ANALYSIS

Article 17, § 5 of the Nevada Constitution specifies the salaries of officers of the state, including the Treasurer, for the first term of office, and further provides that such salaries "shall be paid quarterly, out of the State Treasury." Constitutional provisions are interpreted as follows:

Constitutional interpretation utilizes the same rules and procedures as statutory interpretation. *We the People Nevada v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1170 (2008). We will apply the plain meaning of a statute unless it is ambiguous, "meaning that it is susceptible to 'two or more reasonable but inconsistent interpretations.'" *Secretary of State v. Burk*, 124 Nev. 56, —, 188 P.3d 1112, 1120 (2008) (quoting *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998)). If the constitutional provision is ambiguous, we look to the history, public policy, and reason for the provision. *Id.* Additionally, "the interpretation of a ... constitutional provision will be harmonized with other statutes." *We the People Nevada*, 124 Nev. at 881, 192 P.3d at 1171.

Landreth v. Malik, 127 Nev. 175, 180, 251 P.3d 163, 166 (2011).

Under the plain meaning of Article 17, § 5 of the Nevada Constitution, the Treasurer's salary must be drawn from the State Treasury. This provision does not include a requirement that the Treasurer's salary be paid from a specific account or fund within the State Treasury. The absence of such a provision indicates that the Treasurer's salary may be drawn from any fund or account within the State Treasury, so long as the fund or account is not encumbered or restricted by law in a way that would preclude payment of the Treasurer's salary.

This is illustrated by Article 11, § 6(1) of the Nevada Constitution, as amended, which mandates that the Legislature appropriate supplemental educational funding specifically from the general fund, and not more broadly from the State Treasury as a whole:

In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation *from the general fund*, upon the presentation of budgets in the manner required by law.

Id. (emphasis added).

When the general fund is the intended source of an identified public expenditure, the Nevada Constitution has been worded to so specify. Unlike Article 11, § 6(1) of the Nevada Constitution, Article 17, § 5 contains no reference to a specific fund or account from which the Treasurer's salary must be drawn. This demonstrates an intent to authorize payment of the Treasurer's salary from any account or fund within the State Treasury if otherwise permitted by Nevada law. *See Sheriff, Pershing County v. Andrews*, 128 Nev. 544, 548, 286 P.3d 262, 264 (2012) (stating that the legislature knew how to specifically address an issue but declined to do so, which shows intent).

Any remaining uncertainty concerning the fiscal requirements of Article 17, § 5 of the Nevada Constitution is dispelled by the recorded deliberations of Nevada's Constitutional Convention of 1864. Specifically, in the debate concerning the compensation to be paid to constitutional officers, one of the

members of the Constitutional Convention expressed a desire to include language requiring that official salaries be drawn from the general fund:

MR. GIBSON. There is still another amendment, to insert "out of the State Treasury."

MR. HAWLEY. I wish to propose an amendment to the effect that the payments of the salaries of the officers mentioned shall be made out of the general fund of the State Treasury. Everybody knows, who is familiar with the history of California, that great abuses have been practiced there by borrowing money from different funds. The idea has occurred to my mind at this moment, and I hope the matter will be put into practical shape by some member who is more familiar with the requirements of the various funds than I am.

THE PRESIDENT. It is competent for the Legislature to regulate the several funds. The Legislature can indicate what shall be the general fund, and although such a fund may be created, yet there may be no money in it.

MR. HAWLEY. My experience in those matters is not as extensive as that of our President. It occurred to me that it would be prudent to make some restriction on the subject, but I will not offer an amendment.

The amendment to insert the words "out of the State Treasury" was agreed to.

Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada, July 4, 1864, p. 608.

In discussing the topic of official salaries, the members of the Convention considered a proposal to limit the source of official compensation to the proceeds within an account to be known as "the general fund", but they

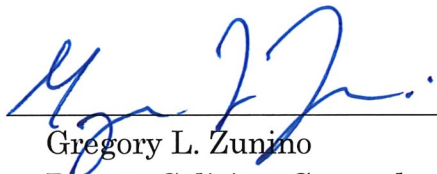
were persuaded instead to leave to the Legislature the task of designating specific accounts or funds for the payment of salaries to Nevada's constitutional officers.

CONCLUSION

Article 17, § 5 of the Nevada Constitution states that the Treasurer's salary must be paid "quarterly, from the State Treasury", but it does not require that the Treasurer's salary be drawn from the general fund or any other particular fund or account within the State Treasury. Therefore, the Treasurer's salary may be drawn from any account within the State Treasury so long as the Legislature has not restricted or encumbered the use of the funds in that account, or otherwise authorized contractual or regulatory constraints upon the use of the funds, so as to preclude payment of the Treasurer's salary.

Sincerely,

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Attorney General

By: 

Gregory L. Zunino
Deputy Solicitor General

GLZ/klr