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100 N. Carson Street
Carson City, Nevada 89701

February 4, 2021

OPINION NO. 2020-04

MUNICIPAL AUTHORITY; LEASES TO
TAX-EXEMPT ORGANIZATIONS: NRS
268.053 precludes a municipality from
leasing real property for less than full
consideration to a tax-exempt organization
other than one with a section 501(c)(3)
designation. NRS 268.053 does not conflict
with NRS 268.055 because NRS 268.053
specifically addresses leases as opposed to
conveyances more generally.

Brittany Lee Walker, Esq.
Acting City Attorney
City of Boulder City
401 California Avenue
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Dear Ms. Walker:

On behalf of Boulder City (City), your predecessor, Steve Morris, has asked whether NRS 268.053 precludes the City from leasing its real property to a tax-exempt organization other than one described in section 501(c)(3) of the Internal Revenue Code (IRC). *See* 26 U.S.C. § 501(c)(3); IRC § 501(c)(3). Section 501(c)(3) describes a subset of tax-exempt organizations authorized to accept tax-deductible contributions from their donors. *See* 26 U.S.C. §§ 170(c)(2) and 501(c)(3). This subset is smaller than the class of tax-exempt organizations to which the City has historically transferred its real property for less than full consideration. For example, the larger class could include,

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among others, social welfare organizations, labor and agricultural organizations, and fraternal beneficiary associations described in IRC §§ 501(c)(4), (5), and (8), respectively.

The request notes that NRS 268.055 confers authority upon the City to “convey” real property without consideration to a “corporation for public benefit”—a term defined at NRS 82.021. *See* NRS 268.055(4); NRS 82.021. A “corporation for public benefit” includes an entity described in section 501(c)(3), as well as an entity that must, upon its dissolution, distribute its assets to a governmental organization or section 501(c)(3) organization. NRS 82.021. In other words, a tax-exempt organization that encumbers its assets in accordance with NRS 82.021 may qualify as a “corporation for public benefit” even if it does not qualify for recognition under section 501(c)(3).

Insofar as NRS 268.055 authorizes the City to convey real property in fee simple to a corporation for public benefit, NRS 268.055 arguably conflicts with NRS 268.053. The apparent conflict arises because NRS 268.055 may be interpreted as authorizing the City to do what NRS 268.053 purports to disallow: lease real property to any tax-exempt organization other than a section 501(c)(3) organization. You have requested an opinion regarding this apparent conflict between NRS 268.053 and NRS 268.055.

ISSUE

If a tax-exempt organization qualifies for tax-exempt status generally, does NRS 268.053 preclude the City from leasing property to that organization for less than full consideration when the organization does not also hold a section 501(c)(3) designation?

SHORT ANSWER

NRS 268.053 is properly construed to preclude the City from leasing real property for less than full consideration to a tax-exempt organization other than one with a section 501(c)(3) designation. NRS 268.053 does not

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conflict with NRS 268.055 because NRS 268.053 specifically addresses leases as opposed to conveyances more generally.

ANALYSIS

Section 141 of the Boulder City Charter empowers the City to transfer city-owned lands to nonprofit corporations under whatever terms the City deems satisfactory. BOULDER CITY CHARTER art. XV, § 141, cl. 1 (2003). Specifically, Section 141 provides:

Section 141. Disposition of city-owned lands; exceptions.

1. The Council is authorized, on whatever terms it deems satisfactory, to negotiate sale, lease or otherwise dispose of city-owned lands directly with bona fide nonprofit corporations organized under the provisions of NRS 81.290 to 81.340, inclusive, 81.350 to 81.400, inclusive, or chapter 82 of NRS and bona fide charitable, religious, educational, eleemosynary and governmental organizations or corporations, organized on such basis that they operate not for profit, and provided further, that any of the foregoing corporations or organizations have qualified for an exemption from Federal Income Tax under the Internal Revenue Code. (Add. 24; Amd. 1; 6-3-2003)

*Id.*¹ Section 141 does not require the recipient of a leasehold or fee simple interest in city-owned property to hold a section 501(c)(3) designation.

¹ The quoted charter section derives from the Legislative Counsel Bureau City Charters of Nevada. Boulder City provides a different version in its ordinances. The Opinion adopts the Legislative Counsel Bureau version but provides the alternative below for reference:

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But Nevada statutes further limit the City's authority to transfer real property for less than full consideration.

For the lease of property, NRS 268.053 provides:

NRS 268.053 Lease of real property to certain nonprofit organizations.

1. The governing body may lease real property to a nonprofit organization that:

(a) Is recognized as exempt under section 501(c)(3) of the Internal Revenue Code;

(b) Is affiliated by contract or other written agreement with the city; and

(c) Provides to residents of the city or to other persons a service that the city would otherwise be required to expend money to provide,

under such terms and for such consideration as the governing body determines reasonable based upon the costs and benefits to the city and the recommendation of any city officers who may be involved in approving the lease.

....

NRS 268.053(1).

SECTION 141. DISPOSITION OF CITY-OWNED LANDS; EXCEPTIONS:

1. The Council is authorized, on whatever terms it deems satisfactory, to negotiate sale, lease or otherwise dispose of City-owned lands directly with bona fide nonprofit corporations and bona fide charitable, religious, educational, eleemosynary and governmental organizations or corporations, organized on such basis that they operate not for profit, and provided further, that any of the foregoing corporations or organizations have qualified for an exemption from Federal Income Tax under the Internal Revenue Code. (Add. 24, Amd. 1, 6-3-2003).

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For the conveyance of property, NRS 268.055 provides:

NRS 268.055 Conveyance of property to corporation for public benefit.

1. The governing body of a city may convey real property of the city without consideration to a corporation for public benefit if the property is not needed for the public purposes of the city and the property is actually used for charitable or civic purposes.

2. A conveyance pursuant to this section may be made on such terms and conditions as seem proper to the governing body of the city.

3. If a corporation for public benefit to which property is conveyed pursuant to this section ceases to use the property for charitable or civic purposes, the property automatically reverts to the city.

4. As used in this section, "corporation for public benefit" has the meaning ascribed to it in NRS 82.021.

NRS 268.055(1)-(4).

A "corporation for public benefit" is a corporation formed or existing pursuant to NRS Chapter 82 that:

1. Is recognized as exempt under section 501(c)(3) of the Internal Revenue Code in effect on October 1, 1991, future amendments to that section and the corresponding provisions of future internal revenue laws; or

2. Is organized for a public or charitable purpose and which upon dissolution must distribute its assets to the United States, a state, or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code as amended.

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NRS 82.021(1)-(2).

NRS 268.053 (the leasing provision) applies to transactions involving section 501(c)(3) organizations, while NRS 268.055 (the conveyance provision) applies more broadly to transactions involving “corporations for public benefit”. Section 501(c)(3) organizations are a subset of corporations for public benefit to which the City may lease its property pursuant to NRS 268.053.² Here, the issue is whether NRS 268.055 effectively supersedes NRS 268.053 by authorizing the City to “convey” its property more generally to corporations for public benefit. This letter thus examines whether the “conveyance” of real property encompasses the transfer of a leasehold interest in that property, such that the limitation in NRS 268.053 is ineffective.

In ascertaining the plain meaning of a statute, one must look to the statutory language at issue, as well as the language and design of the statute as a whole. *Nev. Power Co. v. Pub. Serv. Comm’n of Nev.*, 102 Nev. 1, 4, 711 P.2d 867, 869 (1986). One statute should not be construed to nullify another statute. When two statutes are capable of co-existence, each should be regarded as effective, absent clearly expressed legislative intention to the contrary. *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Presson v. Presson*, 38 Nev. 203, 147 P. 1081, 1082–83 (1915). “Statutes . . . must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results.” *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001).

If a contradiction exists between a general and specific provision, a specific provision controls over a general one “without regard to priority of enactment.” *Bulova Watch Co. v. United States*, 365 U.S. 753, 758 (1961); *W. Realty Co. v. City of Reno*, 63 Nev. 330, 337, 172 P.2d 158, 161 (1946). The

² Section 501(c)(3) organizations must serve a public rather than private interest. See IRC § 501(c)(3); Treas. Reg. § 501(c)(3)–1(d)(1)(i)–(ii) (as amended in 2017). This is a strict standard that generally disqualifies tax-exempt organizations with a social or communal orientation which benefits the organization’s members in whole or in part. *Id.*

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two statutes “may subsist together, the specific qualifying and supplying exceptions to the general, . . .” *Townsend v. Little*, 109 U.S. 504, 512 (1883); *W. Realty Co.* at 337–38, 161–62; *see also Jackson v. State*, 93 Nev. 677, 680–81, 572 P.2d 927, 930 (1977) (subsistence of general tampering statute with specific burglary statute despite asserted contradictions).

Here, the provisions of NRS 268.055 and NRS 268.053 are capable of co-existence and should be interpreted harmoniously. Both provisions appear under NRS Chapter 268 and relate to the transfer of property. They are to be read together. An interpretation of the terms “convey” and “conveyance” in NRS 268.055 that subsumes the term “lease” in NRS 268.053 would render the statutory provisions contradictory, not harmonious. If “conveyance” is construed to encompass a lease, NRS 268.055 essentially nullifies the limitation in NRS 268.053. The canons of statutory construction disfavor such an outcome. Furthermore, such an interpretation would conflict with the legislative purpose of NRS 268.053: to limit the City’s authority to lease its real property to any tax-exempt organization other than one holding a section 501(c)(3) designation.

In addition, as the more specific term, “lease” is properly construed as an exception to the methods of “conveyance” authorized by NRS 268.055. NRS 268.055 contains a broader and more general limitation upon the City’s authority to permanently dispose of its real property, while NRS 268.053 contains a specific limitation upon the City’s authority to temporarily dispose of its real property through the transfer of a leasehold interest. Rendering each of these provisions effective requires interpreting the more specific “lease” language as controlling over the more general reference to “conveyances.” This proper interpretation cannot be accomplished if one interprets the term “convey” as subsuming the term “lease.”

Along with a plain language interpretation of these statutory provisions, legislative history supports a conclusion that the more recent enactment of NRS 268.053 was intended to qualify the provisions of NRS 268.055 by enacting a stricter limitation upon a local government entity’s authority to lease its land to tax-exempt organizations.

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With respect to NRS 268.055, in 2001 the Legislature enacted Assembly Bill (“AB”) 451, which authorized local governments to donate property to certain nonprofit organizations under specified circumstances. The inspiration for the bill came from a development project by the Boy Scouts of America through its local council, whose representative testified that the organization wanted to build a facility on leased government land. *Minutes of the Assemb. Comm. on Gov’t Affairs: 71st Leg. Sess.*, 71st Leg. 2–3 (Apr. 9, 2001). To finance construction on the land, the nonprofit lessee required a stipulation that it owned the land. *Id.* After discussing the difference between section 501(c) and 501(c)(3) organizations, legislators proposed an amendment to authorize a conveyance to “corporation for public benefit.” *Minutes of the Sen. Comm. on Gov’t Affairs: 71st Leg. Sess.*, 71st Leg. 16–17 (May 6, 2001). The term “corporation for public benefit” includes a 501(c)(3) organization or a nonprofit entity that, upon dissolution, distributes its assets to a section 501(c)(3) organization. NRS 268.055(4); NRS 82.021(1)-(2). This was consistent with the legislative objective of authorizing a permanent disposition of government land to a local council of the Boy Scouts of America.³

The legislative history of NRS 268.053 indicates that the provision was intended to complement NRS 268.055 by adopting standards specific to leasing. In 2007 the Legislature enacted AB 462, which sought to clean up a “bad penny bill” from the prior session that addressed the trading and

³ Since the Boy Scouts of America may not operate for pecuniary profit to its members, see 36 U.S.C. § 30906(a) (2012), the organization’s National Council charters local councils to acquire property under a constructive trust, see Boy Scouts of Am., *Charter and Bylaws of the Boy Scouts of America*, art. VI, § 1, cl. 1–2 at 23 (Sept. 2020). Local councils have no authority to commit the National Council to financial obligations. Boy Scouts of Am., *Rules and Regulations of the Boy Scouts of America*, art. III at 8–9 (Sept. 2020). This preserves the National Council’s section 501(c)(3) designation while permitting local councils to pursue a broader mission than is contemplated by section 501(c)(3). The language of NRS 268.055 reflects a legislative intent to accommodate that broader mission.

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exchanging of government land for less than fair market value. *Minutes of the Assemb. Comm. on Gov't Affairs: 74th Leg. Sess., 74th Leg. 16* (Apr. 3, 2007). The bill sought to align local government practices with state land sale processes, thus promoting greater transparency by requiring public notices, public hearings, and appraisals. *Id.* at 16–20. The City of Henderson testified that it wanted cities to have leasing options, since the cities already had conveyance power under NRS 268.055. *Id.* Properly construed, NRS 268.053 authorizes the City to lease real property to a section 501(c)(3) organization and no other, while NRS 268.055 authorizes the City to otherwise dispose of real property by transferring it to a corporation for public benefit.

CONCLUSION

NRS 268.053 is properly construed to preclude the City from leasing real property for less than full consideration to a tax-exempt organization other than one with a section 501(c)(3) designation. NRS 268.053 does not conflict with NRS 268.055 because NRS 268.053 specifically addresses leases as opposed to conveyances more generally. A harmonious reading of the two provisions renders them compatible, not contradictory.

Sincerely,

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By: 

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PLW/klr