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OPINION NO. 2013-01

TAXATION; LOCAL GOVERNMENT; FINANCIAL EMERGENCY: The Department of Taxation, in response to the finding a local government is experiencing a severe financial emergency, does not have the authority to suspend, break, or alter collective bargaining agreements. A property tax increase in response to a severe financial emergency is exempt from partial abatements pursuant to NRS 361.471 *et seq.*

Mr. Christopher G. Nielsen, Executive Director
State of Nevada
Department of Taxation
1550 College Parkway, Suite No. 115
Carson City, NV 89706

Dear Mr. Nielsen:

You have requested an opinion from this office regarding the powers of the Department of Taxation (Department) in the event it takes over the management of a local government in response to a severe financial emergency.

QUESTION ONE

In a severe financial emergency, can the Department—on behalf of the local government—suspend, break, or otherwise alter existing collective bargaining agreements pursuant to NRS 354.695 or any other applicable law?

ANALYSIS

Administrative agencies are creatures of statute, and their authority to act is limited to those powers delegated or implied by statute. *City of Henderson v. Kilgore*, 122 Nev. 331, 131 P.3d 11 (2006). The Department can only exercise the specific powers enumerated in statute. NRS 354.695(1) spells out the powers of Department when it takes over the management of a local government. For the purposes of your questions, the pertinent provisions are as follows:

1. As soon as practicable after taking over the management of a local government, the Department shall, with the approval of the Committee:

...

(g) Negotiate and approve all collective bargaining contracts to be entered into by the local government, except issues submitted to a fact finder whose findings and recommendations are final and binding pursuant to the provisions of the Local Government Employee-Management Relations Act;

...

(n) Take any other actions necessary to ensure that the local government provides the basic services for which it was created in the most economical and efficient manner possible.

NRS 354.695(1)(g) specifically addresses the Department's power in relation to collective bargaining agreements. The Department can negotiate and approve all collective bargaining to be entered into, but the Legislature did not authorize the Department to suspend, break, or otherwise alter collective bargaining agreements already in existence.

NRS 288.150 identifies terms that must be the subject of mandatory bargaining between a local government employer and an employee organization. NRS 288.150 (2)(w) states:

2. The scope of mandatory bargaining is limited to:

...

(w) Procedures and requirements for the reopening of collective bargaining agreements that exceed 1 year in duration for additional, further, new or supplementary negotiations during periods of fiscal emergency. The requirements for reopening a collective bargaining agreement must include, without limitation, measures of revenue shortfalls or reductions relative to economic indicators such as the Consumer Price Index, as agreed upon by both parties.

If the Department takes over the management of a local government and the collective bargaining agreements entered into by the local government include a term as provided for in NRS 288.150(2)(w) for reopening the agreements in the case of fiscal emergency, the Department could reopen the agreements pursuant to those terms.¹

Although subsection (2)(n) acts as a catchall provision that allows the Department to take any other actions necessary to ensure a local government provides basic services, this general provision does not prevail over the more specific provisions relating to collective bargaining agreements. *Mineral County v. State, Bd. Equalization*, 121 Nev. 533, 119 P.3d 706, 710 (2005) (Hardesty, dissenting) ("That rule of statutory construction provides that a special provision dealing with a particular subject is controlling and preferred to a provision relating only in general terms to the same subject.") (footnote omitted).

CONCLUSION TO QUESTION ONE

When the Department takes over the management of a local government because of a severe financial emergency, the Department does not have authority to suspend, break, or otherwise alter collective bargaining agreements. The

¹ Although NRS 288.150(4) permits a local government employer to suspend collective bargaining agreements in emergencies such as military action, natural disaster or civil disorder, it does not include fiscal emergencies that are specifically addressed in NRS 288.150(2)(w).

Department could reopen a collective bargaining agreement pursuant to the terms of that agreement if the agreement included a term consistent with NRS 288.150(2)(w).

QUESTION TWO

In a severe financial emergency, if the Nevada Tax Commission raises the property tax rate of the local government pursuant to NRS 354.705(2), do the partial tax abatements contained in NRS 361.471 *et seq.* apply?

ANALYSIS

If, after the Department takes over the management of a local government, the Executive Director determines that the available revenue is not sufficient to provide for the payment of required debt service and operating expenses, the Executive Director may submit his or her findings to the Committee on Local Government Finance (Committee). NRS 354.705(2). If the Committee determines that additional revenue is needed, it must prepare a recommendation to the Nevada Tax Commission as to which one or more taxes should be imposed by the local government. *Id.* The taxes that can be imposed by the local government include "[t]he levy of a property tax up to a rate which when combined with all other overlapping rates levied in the State does not exceed \$4.50 on each \$100 of assessed valuation." NRS 354.705(2)(a).

NRS 361.471 *et seq.* directs that a partial abatement for property owners be instituted so that assessments are capped from one year to the next. For example, for an owner-occupied single family residence, the property tax bill is capped at an annual increase of 3 percent. NRS 361.4723. The question then is whether the partial abatement applies if the increase in property tax imposed by the local government in a severe financial emergency exceeds the cap.

NRS 361.4726 provides for certain exemptions from the partial abatement of property taxes:

1. Except as otherwise provided by specific statute, if any legislative act which becomes effective after April 6, 2005, imposes a duty on a taxing entity to levy a new ad valorem tax or to increase the rate of an existing ad valorem tax, the amount of the new tax or increase in the rate of the existing tax is exempt from each partial abatement from taxation provided pursuant to NRS 361.4722, 361.4723, and 361.4724.

2. For the purposes of this section, "taxing entity" does not include the State.

When a local government is experiencing a severe financial emergency, the Legislature has granted authority to the Nevada Tax Commission to require the local government to increase property taxes to raise revenue. NRS 354.705. The legislative act granting this authority to increase the rate of the existing property tax does not become effective until certain conditions are met.²

The conditions that must be met are articulated in NRS 354.705. As noted above, if the revenue is not sufficient, the Committee must prepare a recommendation to the Nevada Tax Commission for additional revenue that may include the levy of a property tax. Prior to adopting a proposed plan for additional revenue, the Nevada Tax Commission must hold a public hearing in a location within the boundaries of the local government and notice of the hearing must be provided to the governing body of each local government that overlaps with the jurisdiction of the local government in which the severe financial emergency exists. NRS 354.705(3). After the public hearing is conducted, the Nevada Tax Commission may adopt the plan. The plan must include the duration for collection of the new taxes which may not exceed five years. NRS 354.705(4).

Once the plan is adopted by the Nevada Tax Commission, the legislative grant of authority to raise property tax becomes effective and the local government must impose the additional taxes according to the plan. NRS 354.705(5). The effective date of the legislative act permitting the increase in property taxes is the date the conditions in NRS 354.705 are met, which is necessarily after April 6, 2005. The increase in property tax in response to a severe financial emergency is therefore exempt from the partial abatement of property taxes pursuant to NRS 361.4726.

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² In an early case, the Nevada Supreme Court ruled on similar legislation wherein the legislative act imposing a duty to impose a tax was not effective until a condition was met. In 1915, the condition was the existence of a high school in a county. See *State ex rel. Reno Sch. Dist. No. 10 v. Board of Cnty. Comm'rs. of Washoe Cnty.*, 38 Nev. 269, 149 P. 191 (1915).

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CONCLUSION TO QUESTION TWO

Because the legislative act imposing a duty on the local government to collect additional ad valorem taxes becomes effective once certain conditions are met pursuant to NRS 354.705, which is necessarily after April 6, 2005, the property tax increase in response to a severe financial emergency is exempt from the partial abatements in NRS Chapter 361. NRS 361.4726.

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