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Guidance Letter xx-xxxx

Date: January 22, 2019

To: Chief Financial Officers and Auditors

From: The Committee on Local Government Finance

CC: Melanie Young, Executive Director, Department of Taxation
Jeffrey Mitchell, Deputy Director, Local Government Services
Kelly Langley, Supervisor, Local Government Finance

Subject: **Guidance regarding NRS, 354.624 Submittal of Audits, 354.626 Unlawful Expenditures, and NAC 354.410 Available Resources**

SUMMARY: NRS 354.624 sets the timelines regarding the submittal of the annual audit. There have been citations and findings in audits that have come in front of the Committee of Local Government Finance indicating possible non-compliance with dates. This guidance letter is to provide clarification on when there should be a violation of the timing or when a request for an extension is needed. Clarification shall also be provided in regards to some other common findings or citations in audits.

APPLICABLE STATUTES:

NRS 354.624, 354.626 and NAC 354.410

DISCUSSION:

1. Discussion point 1 is in reference to the following NRS's
NRS 354.624.1

"Each local government shall provide for an annual audit of all of its financial statements. A local government may provide for more frequent audits as it deems necessary. Except as otherwise provided in subsection 2, each annual audit must be concluded and the report of the audit submitted to the governing body as provided in subsection 6 not later than 5 months after the close of the fiscal year for which the audit is conducted. An extension of this time may be granted by the Department of Taxation to any local government that submits an application for an extension to the Department. If the local government fails to provide for an audit in accordance with the provisions of this section, the Department of Taxation shall cause the audit to be made at the expense of the local government. All audits must be conducted by a certified public accountant or by a partnership or professional corporation that is registered pursuant to [chapter 628](#) of NRS."

NRS 354.624.6

"The opinion and findings of the auditor contained in the report of the audit must be presented at a meeting of the governing body held not more than 30 days after the report is submitted to it. Immediately thereafter, the entire report, together with the management letter required by generally accepted auditing standards in the United States or by regulations adopted pursuant to [NRS 354.594](#), must be filed as a public record with

- (a) The clerk or secretary of the governing body;
- (b) The county clerk;
- (c) The Department of Taxation; and
- (d) In the case of a school district, the Department of Education

For non-school local government entities, within 5 months after the close of the fiscal year the audit report must be completed and submitted to the local government body. A meeting of the governing body of the local entity must be held 30 days after the report is submitted to the governing body. The local government body does not approve the audit report, rather they accept it. Some examples of the timing of submittal of the audits will be provided to help provide clarification on the timing on this.

Example 1: If an audit report is delivered to the local government by November 30th and meeting is scheduled within 30 days after the report is delivered. Even though that meeting may be held in December, that local government is not out of compliance. The law does not state that the meeting is to be held before November 30th. Rather that the report is delivered and then a meeting scheduled within 30 days.

Example 2: If an audit report is delivered to a local government earlier than November 30th. Let's say the report was delivered October 15th. A meeting would need to be scheduled within 30 days. If a meeting was scheduled November 25th this entity would be out of compliance.

Example 3: The Management Discussion and Analysis or MDA needs to be completed when the audit is to be submitted to the various public bodies indicated in NRS 354.624.6. If it not completed it is appropriate to ask for an extension to complete the MDA. The report is not considered complete and timely filed if the MDA letter is not included in the packet.

2. Discussion point 2 provides clarification on wording commonly found in audits.

There needs to be caution when indicating possible violations. There are instances when there are exceptions to normal practice and there is an occurrence beyond the control of the local government entity, which should be noted in the audit and explained, but if such an occurrence does not cross the threshold of being a violation, it should not be worded in such a manner as to indicate a "possible violation". An event is either in compliance or out of compliance. It is appropriate and encouraged to explain such instances but it is not appropriate to indicate such things as a "possible violation" as that may be interpreted as non-compliance. Suggested wording to use in such instances instead of "possible violation" is as follows.

"The over expenditure in "X" is not a violation due to...." This would provide clarity to the occurrence while explaining in transparency what has occurred. At the same time it would not indicate possible violations where there is not.

In Regards to the word expenditures, it should be noted that operating transfers are not expenditures. It is not a violation for local governments to overspend their operating transfers.

3. Discussion point 3 provides clarification on NRS 354.626.2e and NAC 354.410

NRS 354.626.2(e) outlines Unlawful expenditure of money in excess of amount appropriated.

It is to be clarified that exceptions are items they don't have control over such as insurance, workers comp, medical expense and bargaining union contracts are exceptions per NRS 354.626.2(e).

Example 4: Where a school district had an over expenditure due to arbitration that was out of their control. Negotiations can go on for years, and decisions may even be retroactive. Therefore these expenditures are specifically excluded and are not a violation in accordance with NRS 354.626.2(e).

This guidance letter also emphasizes that "over expenditures" are at the function level in a particular fund, NOT at a line item level.

NAC 354.410 is in regards to Available resources for augmentation purposes and states as follows:

1. An un-appropriated ending balance of any governmental fund, except a fund for capital projects, is not an available resource. Available resources are:
 - (a) An opening balance which is larger than anticipated;
 - (b) Revenues in excess of those budgeted;
 - (c) Revenues generated from previously unbudgeted sources; or
 - (d) An un-appropriated ending balance of a fund for capital projects.
2. The difference between the total of the original budgeted resources and the total of the revised resources is the amount available for budget augmentation.

In regards to this regulation clarification is provided that available resources for augmentation do not reflect on if the ending fund balance is lower than budgeted. Such an occurrence could be the factor of variety of things. Such an instance would be of financial management concern but is not of legal concern or a violation.

Example 5: An entity had a budgeted ending fund balance of \$1,000,000 yet the actual ending fund balance was \$750,000. The audit note stated this was a violation of 354.410. This particular entity's total revenues were below budget, and although the lower ending fund balance may be a management consideration, it is not a violation.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>
Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."