



Washoe County District Attorney

RICHARD A. GAMMICK
DISTRICT ATTORNEY

October 14, 2011

Ms. Tammi Davis, Treasurer
Washoe County Treasurer's Office
P.O. Box 30039
Reno, Nevada 89520

Re: Opinion Regarding Allocation of Property Taxes to Redevelopment Areas

Dear Ms. Davis:

You recently requested a legal opinion of this office on a number of issues regarding the allocation of property taxes to redevelopment areas pursuant to NRS chapter 279. Nearly identical questions were earlier posed of the Nevada Office of the Attorney General by the Nevada Department of Taxation. The Nevada Office of the Attorney General issued its written opinion on those questions on September 16, 2011. I respond with somewhat different conclusions to those questions in this legal opinion.

Before responding to your precise questions, however, it is advisable to briefly review Nevada's statutory scheme for allocating property taxes to redevelopment areas. In doing so, we learn that it was the 1959 Legislature which first authorized tax increment financing. In its 1959 enactment, the Legislature made it clear, in what is now codified as NRS 279.676, that taxes collected in such a district shall first be allocated into the funds of the respective taxing districts.¹ This is commonly referred to as the "base." Next, NRS 279.676(1)(b) establishes that "the levied taxes each year in excess of" the amounts set forth in NRS 279.676(1)(a),(c) and (d) "must be paid into a special fund of the redevelopment agency." Next, NRS 279.676(1)(c) and (d) set forth the obligation to pay what are commonly referred to as "carve-outs." These are obligations specially incurred on or after November 5, 1996.² Thus, once the base and carve-outs have been

¹ NRS 279.676(1)(a) states that taxes are first allocated as follows:

That portion of the taxes which would be produced by the rate upon which the tax is levied each year by or for each of the taxing agencies upon the total sum of the assessed value of the taxable property in the redevelopment area as shown upon the assessment roll used in connection with the taxation of the property by the taxing agency, last equalized before the effective date of the ordinance, must be allocated to and when collected must be paid into the funds of the respective taxing agencies as taxes by or for such taxing agencies on all other property are paid.

² NRS 279.676(1)(c) and (d) state that taxes are next allocated as follows:

(c) That portion of the taxes in excess of the amount set forth in paragraph (a) that is attributable to a tax rate levied by a taxing agency to produce revenues in an amount sufficient to make annual repayments

paid, any excess taxes collected shall be paid into a special fund of the redevelopment district, subject to the caveat set forth in NRS 279.676(1)(b) that the amount paid is limited to an amount necessary to pay the costs of redevelopment and to pay the principal of, and interest on, loans or other indebtedness of the redevelopment agency.

Nevada's scheme is consistent with tax increment financing in other states in that the tax base of the real property within the zone is essentially frozen for tax increment financing purposes. Increases in the property value caused by new improvements within the zone are expected to create increased tax revenue. The taxes collected on the value of the real property above the frozen tax base are then used to pay off any debt, or costs, incurred in the construction of improvements in the zone. When the additional taxes from the improvements have been retired for the project, or if the redevelopment zone expires, tax increment financing status ends and the participating taxing units begin receiving the full tax, based on the assessed value of the property. During the life of a redevelopment area all participating taxing units forego taxes on increases in the value of the real property to finance the improvements that generated such increases. In no instance do the participating taxing units forego their frozen tax base or, in the case of Nevada, are carve-out obligations to be ignored before the redevelopment district receives its revenues.

The statute describing the tax base remained in its 1959 version, without any modifications, until the 1981 session of Nevada's Legislature. During that session, a provision was added to the statute which, although since repealed in 1997, established that a merger of a redevelopment project area may occur with a tax increment area and that, if such a merger occurs, the plan for the converted area must provide that after the projects specified in the plan have been completed and any indebtedness incurred in connection with the projects has been paid, no further taxes for the converted redevelopment area are to be allocated to the agency. See 1981 Statutes of Nevada, page 1241. This provision was eventually codified at NRS 279.677 and a 1983 amendment obligated that the taxes allocated to the agency under NRS 279.676 were to be computed separately for the original redevelopment area and for the original tax increment area. This requirement for separate computations may have been intended to make it somewhat easier to determine when it was appropriate to cut off the allocation of tax increases attributable to each area, as the original obligations were paid off, although I am unable to find any definitive

of the principal of, and the interest on, any bonded indebtedness that was approved by the voters of the taxing agency on or after November 5, 1996, must be allocated to and when collected must be paid into the debt service fund of that taxing agency.

(d) That portion of the taxes in excess of the amount set forth in paragraph (a) that is attributable to a new or increased tax rate levied by a taxing agency and was approved by the voters of the taxing agency on or after November 5, 1996, must be allocated to and when collected must be paid into the appropriate fund of the taxing agency.

legislative history to this effect. But such a conclusion is consistent with tax increment financing in general. Additionally, it is consistent with the history of the evolution of the downtown Reno redevelopment project itself where, in 1979, the City of Reno established a tax increment district which was absorbed when Reno created the redevelopment agency in 1983. Then, it was in 1987 that the Nevada Legislature capped the total revenue payable to a redevelopment agency. In so providing, the 1987 Legislature also enacted the currently-existing language found in NRS 279.676(3).³ See 1987 Statutes of Nevada, page 1684.

As to your individual questions, you first query whether the obligation found in NRS 279.676(3) for taxing agencies to pay to the redevelopment agency ends when a debt obligated before July 1, 1987 is retired. The Attorney General, in answering the same question, concluded that the statute's language "is very clear in that it states that taxing agencies must continue to pay to a redevelopment agency created prior to July 1, 1987 the amount that was being paid to the redevelopment agency prior to July 1, 1987 for the repayment of debt." The Attorney General went on to state that "[t]his amount is a fixed amount set at a specific point in time" and that "[t]here is no language in NRS 279.676(3) that suggests the amount fluctuates based on the annual debt service for debt incurred prior to NRS 279.676(3)."

The Attorney General's conclusion leads to some potentially strange results. The statute, in its entirety, reads as follows:

The taxing agencies shall continue to pay to a redevelopment agency any amount which was being paid before July 1, 1987, and in anticipation of which the agency became obligated before July 1, 1987, to repay any bond, loan, money advanced or any other indebtedness, whether funded, refunded, assumed or otherwise incurred. NRS 279.676(3)(emphasis added).

The Attorney General's opinion was based upon a plain reading of the first part of the above-quoted statute. But statutes must be construed in their entirety and the emphasized second part of the above-quoted statute cannot be ignored. It, like the first part of the statute, needs to be given its plain meaning, also, and its plain meaning modifies, or conditions, the command contained within the first part of the statute. As recently as July of this year, in fact, our Supreme Court, in State Tax Com'n, ex rel. Nevada Dept. of Taxation v. American Home Shield of

³ NRS 279.676(3) provides:

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Nevada, 254 P.3d 601 (Nv. 2011), reminded us that "[s]tatutes must be construed as a whole, and phrases may not be read in isolation to defeat the purpose behind the statute." Relying upon Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) and Backhus v. Transit Cas. Co., 549 So.2d 283, 291 (La. 1989), the Court noted that hypertechnical interpretations of a statute should be rejected when its plain language leads to a reasonable interpretation consistent with legislative intent.

When the statute is read in its entirety, it is clear that its purpose extended to any obligations for debt service and that any current obligation to pay money to a redevelopment agency is tied to amounts being paid before July 1, 1987 and to which the agency was obligated before that date, presumably under the terms of the original obligation. Therefore, to the extent that the debt was retired after July 1, 1987, the obligation of the taxing agencies to pay under this statute ends. If, however, the debt remains active, the taxing agencies continue to be obligated to pay under this statute to the same extent, and under the same terms, as was the redevelopment agency obligated to its bondholders on July 1, 1987. This interpretation is also consistent with the rules of statutory construction which states that statutes are read in such a manner that makes the words and phrases essential and the provisions consequential, Mangarella v. State, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001), and that statutes should not be construed in such a manner as to produce unreasonable or absurd results. Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001).

Thus, as stated above, NRS 279.676(3) must be viewed in its entirety, as limited to amounts being paid before July 1, 1987 and to which the agency was obligated before that date, under the terms of the original obligation, and to which the agency remains obligated. NRS 279.676(3) refers to the taxing districts continuing to pay amounts being paid before July 1, 1987 for indebtedness "whether funded, refunded, assumed or otherwise incurred." This statutory obligation applies only to debt issued on or before July 1, 1987, under the terms and conditions set forth in the documentation⁴ accompanying the debt's issuance before that date. Such documentation establishes that the redevelopment agency's last issuance of debt before July 1, 1987 occurred on March 1, 1987. This documentation clearly spells out the annual debt service for the term of the bonds, and the duration of the debt service obligation at the time the bonds were issued. In this regard, the annual debt service for the bonds involved contemplated the payoff of a portion of the debt in 2005, with the remainder of the debt contemplated to be paid-off in 2017. The redevelopment agency's promises to its bondholders, as set forth in the Official Statement, do not extend beyond the payoff of the obligations and it is not a sensible reading of NRS 279.676 that the stream of revenues flowing to the redevelopment agency to secure other bonded indebtedness would go on and on. A conclusion otherwise would theoretically permit a redevelopment agency to continuously renegotiate, with its lenders and to the exclusion, and

⁴ See "Official Statement" of the Redevelopment Agency of the City of Reno, Nevada; Downtown Redevelopment Project; \$15,000,000 Tax Allocations Bonds, Series B. March 1, 1987.

detriment, of the taxing agencies, its pre-1987 debt, a result which runs afoul of generally accepted principles of tax increment financing, of then-effective statutory provisions and which would have the result of impairing the taxing districts' own obligations of contract entered into in reliance on the representations made at the time the redevelopment district debt was originally assumed. It is also the opinion of this office that if the redevelopment agency's projects have been completed, and the associated obligations have been extinguished, NRS 279.676(3) obligates no additional revenue payments to the agency, irrespective of what might have been paid to the agency before July 1, 1987.

This moves us into your second question concerning whether the amount paid is tied to the debt service required on July 1, 1987, or whether it fluctuates to reflect the actual debt service for each subsequent year. In response to a similar question, the Attorney General concluded that "[t]he amount would continue to be paid as long as a redevelopment agency created prior to July 1, 1987 is still in existence and owes debt." Presumably, although the Attorney General's opinion is less than entirely clear on this point, the Attorney General's statement that "NRS 279.676(3) does not include any language regarding the termination of the payment once the debt incurred prior to July 1, 1987 is paid off" the Attorney General is of the belief that the payments being made to the redevelopment agency before July 1, 1987 are to continue as they were made on July 1, 1987, irrespective of whether the debt is still outstanding.

If, in fact, my reading of the Attorney General's opinion is correct, I disagree with such a conclusion. For the reasons set forth above in response to your first question, along with the general structure of tax increment financing across the nation, also as set forth earlier in this opinion, the amount paid to the redevelopment agency fluctuates to reflect actual debt service for each subsequent year. To conclude otherwise would ignore anticipated fluctuations in annual debt service associated with the issuance tax allocation bonds for a redevelopment area and would essentially hamstring the other taxing agencies into a sort of perpetual involuntary servitude to the redevelopment agency. That is a result at odds with the implementation of tax increment financing schemes across the nation.

As for your third question, you have asked how the order of priority between the payment requirements contained within NRS 279.676 is determined during a tax year when there is insufficient tax revenue to cover all the minimum allocations required by the statutory scheme. In response to a similar question, the Attorney General stated that "the statute does not prioritize the distribution of taxes pursuant to NRS 279.676(1) and the payment due the redevelopment agency pursuant to NRS 279.676(3)" and that "the statute does not provide any guidance regarding the priority for distribution of taxes pursuant to NRS 279.676(1) as opposed to NRS 279.676(3)." Here, however, the Attorney General's opinion goes on to state that "[w]ithin NRS 279.676(1) the distribution of the base and payment of the carve-outs are given priority over payment of the increment to the redevelopment agency." This statement, on its face, appears to contradict the Attorney General's earlier conclusion that the statute does not provide any

guidance regarding the priority for distributing taxes under this statutory scheme. To the contrary, it establishes that taxing agencies are to be paid first, the carve-outs are to be paid next and that if any increment remains, it should be paid to the redevelopment agency, as limited by the cost of redevelopment and the agency's annual debt service. In the event tax revenues exceed this amount, those tax revenues are appropriately divided among the taxing agencies in proportion to the share they would otherwise receive under NRS 279.676(1)(a).

Finally, this opinion is mindful of another significant guarantee within Nevada's laws which surrounds the issues raised by your questions. NRS 350.610 establishes that:

The faith of the State is hereby pledged that the Local Government Securities Law, any law supplemental or otherwise appertaining thereto, and any other act concerning the bonds or other municipal securities, taxes or the pledged revenues or any combination of such securities, such taxes and such revenues shall not be repealed nor amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding municipal securities, until all such securities have been discharged in full or provision for their payment and redemption has been fully made, including without limitation the known minimum yield from the investment or reinvestment of moneys pledged therefor in federal securities. (emphasis added)

This statute, enacted in 1967, guarantees that the full faith and credit of the State of Nevada will be used to ensure that no act will be taken to adversely impair outstanding municipal securities. The law applies to any projects authorized under Nevada law, other than by the levy and collection of special assessments, and is supplemental to the laws, including those found in NRS chapter 279, authorizing project funding. The protections provided by this law lend additional support and credence to the answers provided to you in this opinion, especially insofar as this opinion should not be construed as disturbing what should have been the expectations of the redevelopment agency, the State of Nevada, Washoe County and any other taxing agencies, as such expectations existed on July 1, 1987, and thereafter.

If you need additional information concerning this topic, please advise.

Sincerely,

RICHARD A. GAMMICK
District Attorney

By: 
DAVID C. CREEKMAN
Chief Deputy District Attorney