

Respectfully submitted,

RICHARD H. BRYAN, *Attorney General*

By EDWIN E. TAYLOR, JR., *Deputy Attorney General,*  
*Criminal Division*

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**OPINION NO. 79-3 Enactment Of Municipal Ordinances By Initiative Petition--A proposed municipal ordinance, which has been offered for consideration by initiative petition, but which would benefit a private corporation through the expenditure of public funds would be contrary to Article 1, Section 8 and Article 8, Section 10 of the Nevada Constitution. A city council may not enact, nor offer to the people for their enactment under [NRS 295.215](#), a municipal ordinance which, if enacted, would be contrary to the constitution and laws of the State of Nevada or the city charter.**

CARSON CITY, February 13, 1979

THE HONORABLE GEORGE E. FRANKLIN, *City Attorney*, City of North Las Vegas, P.O. Box 4086,  
North Las Vegas, Nevada 89030

DEAR MR. FRANKLIN:

You have requested an opinion as to the legality of an ordinance contained in an initiative petition submitted to the North Las Vegas City Council concerning bonds issued under the Consolidated Local Improvements Law for facilities constructed in the Nellis Industrial Park.

#### FACTS

The City of North Las Vegas, pursuant to Chapter 271 of NRS, the Consolidated Local Improvements Law, has issued bonds and warrants to defray the costs of certain public improvements affecting the Nellis Industrial Park. Again in accordance with Chapter 271, an assessment district has been established for the purpose of assessing the landowners affected by these improvements for the funds to pay off the bonds and warrants. A large landowner, a private corporation, which is subject to assessments under this law has apparently refused to pay these assessments. The city, to avoid defaulting on the bonds and warrants, has been paying for them from public moneys diverted from the city's general funds and other public funds. You have informed us that some \$3 million has been paid in this way. The city has been in litigation with the landowner and has obtained a money judgment against the corporation for the unpaid assessments. This judgment has been affirmed in the Nevada Supreme Court.

The city council has now received an initiative petition proposing an ordinance to deal with this matter. The city does not question the sufficiency of the form of the petition. However, the city does question whether the ordinance may be legally enacted.

The proposed ordinance would require the city to enter into a settlement agreement, the terms of which are attached to the ordinance and apparently made a part thereto, which would require the city to dismiss with prejudice all its litigation against the private corporation involved in this matter. The city would further be required by the ordinance and the agreement to release or assign to the private corporation all unpaid assessments previously levied against the corporation. Finally, the city would be required by the ordinance and the agreement to issue new bonds or warrants worth \$2.7 million for improvements on property owned by the private corporation in the Nellis Industrial Park.

Once the market value of all the property in the Nellis Industrial Park, whether owned by the

private corporation or not, reached \$10 million, the city would be obligated by the ordinance to release and discharge any assessments levied against the corporation for the repayment of the bonds and warrants.

### QUESTION

Ordinarily, under [NRS 228.150](#) subsection 2, the Attorney General is not required to give his opinion relating to the interpretation of city ordinances. However, in this case the request for an opinion inextricably involves a request for an interpretation of [NRS 295.215](#) and the city council's authority, if any, to proceed under that state statute. Therefore, this office offers the following response to the request. In addition, because of the conclusion reached by this office in this opinion, it is not necessary to consider the legality of the form of the proposed ordinance, a question which you also posed in your request for an opinion.

It is readily apparent that the proposed ordinance is special legislation designed to benefit not the public as a whole, but a private corporation. A special law applies only to certain individuals or classes of individuals and is designed to benefit private interests and not public interests. *Clarke v. Irwin*, [5 Nev. 111](#), 120 (1869); Attorney General's Opinion No. 215, July 12, 1977. It is true that the originators of the initiative measure have stated in its preamble that the ordinance is designed to help prevent the default of the city on its bonds, which would endanger the city's credit rating, and to help prevent the use of general fund moneys to meet the city's obligations. However, considering the actual thrust of the proposed ordinance, i.e., the conferring of substantial benefits on a private corporation, it would appear that the preamble of the proposed ordinance does not reflect its true purpose and effect. There are other means for preserving the city's credit rating and treasury than through special legislation, including the successful prosecution of litigation against persons or entities failing to pay their assessments. Indeed, the foreclosure of assessment liens for unpaid assessments is specially authorized by Chapter 271 of [NRS 12](#) the means for meeting these public objectives.

Generally, absent law to the contrary, an ordinance which is designed to benefit special interests rather than public interests is void. *State ex rel. Davies v. Reno*, [36 Nev. 334](#), 336-337, 136 P. 110 (1913). This case dealt with an initiative petition, circulated under the authority conferred by the then Reno City Charter, to enact an ordinance granting a private individual a special license. The initiative provisions of the Reno City Charter did not permit special legislation.

However, the initiative petition submitted to the North Las Vegas City Council was circulated under the authority of Article 19, Section 4 of the Nevada Constitution. This section states:

The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, *special* and municipal legislation of every kind in or for such county or municipality \* \* \*. (Italics added.)

This section of the state constitution unequivocally permits special legislation to be enacted by municipalities by means of initiative measures.

A constitution, however, must be considered as a whole:

Effect is to be given, if possible, to the whole instrument, and to every section and clause. If different portions seem to conflict, the court must harmonize them, if practicable, and must lean in favor of a construction that will render every word operative, rather than one which may make some words idle and nugatory. *Ex parte Shelor*, [33 Nev. 361](#), 374, 111 P. 291 (1910).

The proposed ordinance must be construed with reference to two other provisions of the state constitution which have a bearing on the question asked. Article 1, Section 8 of the Nevada Constitution provides in part:

\* \* \* No person shall \* \* \* be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation having been first made \* \* \*

Article 8, Section 10 provides:

No county, city, town, or other municipal corporation shall become a stockholder in any joint stock company, corporation or association whatever, or loan its credit in aid of any such company, corporation or association, except, railroad corporations, companies or associations.

Public funds may not be spent for private purposes. Thus, if a county, for example, were to levy a tax to retire bonds and the bonds were issued to meet private purposes, the law would be declared void pursuant to Article 1, Section 8 of the Nevada Constitution. *State ex rel. Brennan v. Bowman*, [89 Nev. 330](#), 332, 512 P.2d 1321 (1973). Such a result is based on the rationale that government cannot use its taxing power to raise revenues from its citizens for the use of a private enterprise conducted by other citizens. This would constitute an unauthorized invasion of a private right contrary to the fundamental principle that a tax is valid only when it is levied for a public purpose. See *State v. Churchill County*, [43 Nev. 290](#), 296, 185 P. 459 (1919).

In discussing that portion of Article 1, Section 8 which prohibits the taking of private property for public use without just compensation, the Nevada Supreme Court in *Gibson v. Mason*, [5 Nev. 283](#) (1869) at page 304 stated:

When, therefore, property is taken in satisfaction of a tax, it is not within the constitutional prohibition [because the payment of taxes is a duty and creates no obligation to repay]. But it is argued from the provision, by counsel, if private property cannot be taken for public use without just compensation, it cannot be taken for private use, claiming that the tax sought to be collected is simply for the private purpose, that it is levied for the benefit of private individuals, or that it is taking the property of one citizen and giving it to another. *If this were a fact we should unhesitatingly declare the law unconstitutional* \* \* \*. (Italics added.)

The United States Supreme Court, in construing the “due process” provisions of the Fourteenth Amendment to the United States Constitution has gone one step further and has stated:

One person’s property may not be taken for the benefit of another private person, even though compensation be paid. *Thompson v. Consolidated Gas Co.*, 300 U.S. 55, 79-80 (1937). See also *Eggmeyer v. Eggmeyer*, 554, S.W.2d 137, 141 (Tex. 1977); *Washington-Summers, Inc. v. City of Charleston*, 430 F.Supp. 1013, 1015 (S.D.W.Va. 1977).

[NRS 271.495](#), subparagraph 1 of the Consolidated Local Improvements Law provides that if the special fund created by the proceeds of assessments levied for improvements is insufficient to pay off bonds and interest for the project, the deficiency “shall” be paid out of the municipality’s general fund, regardless of source. Subparagraph 2 of [NRS 271.495](#) provides that if general fund moneys are insufficient for this purpose, the governing body of the municipality shall levy, “and

it shall be its duty to levy,” general ad valorem taxes upon *all* property in the municipality to meet the deficiency.

To a certain extent these events have already occurred in this matter. Because the private corporation involved has refused to pay its assessments on the project, the City of North Las Vegas has had to reach into general fund moneys for over \$3 million to meet the deficiency on the outstanding bonds and warrants. This is a direct charge on all the taxpayers of the municipality.

If the City of North Las Vegas, which has brought successful litigation against the delinquent landowner for reimbursement, is required by the proposed ordinance to waive its judgment and release its claims against the private corporation for these funds, it will in effect, by permanently using general fund moneys to meet the bond debt, have taxed all the private citizens of the city to pay a debt owned by one private interest, the private corporation against which the claims for reimbursement are brought. In effect a tax will have been levied for a private purpose—the relief of the private corporation of its debts—and it must be considered the taking of the private property of the citizens of the city and effectually giving it to a private interest. Under the authority of *Gibson v. Mason*, *supra* and *State ex rel. Brennan v. Bowman*, *supra*, it is the opinion of this office that such a measure would be contrary to Article 1, Section 8 of the Nevada Constitution.

The situation is compounded by the additional fact that under the proposed ordinance a new \$2.7 million issue of bonds and warrants for projects on property owned by the private corporation is required. When all the property in the Nellis Industrial Park reaches a market value of \$10 million, which is likely to be due in part to construction of the improvements paid for by the city, the ordinance would require that assessments levied against the private corporation be “released and discharged.” Since the market value figure could be reached before sufficient assessments are collected to reduce or retire the bond debt, the city’s general fund from tax revenues would be permanently liable for any deficiencies under Chapter 271. Once again, a tax would be effectively, and perhaps actually, levied on all the citizens of the city, taking their private property and, in effect, giving it to a private interest for the improvement of the property of a private corporation. Based on the above authorities, this too would be in the opinion of this office, contrary to Article 1, Section 8 of the Nevada Constitution.

With respect to Article 8, Section 10 of the Nevada Constitution, a municipality is prohibited from loaning its credit in aid of a corporation. The term “loan its credit in aid of such company,” which is used in Article 8, Section 10, has been interpreted as an action imposing a financial burden on a city and which constitutes a charge on its tax funds. *McLaughlin v. L.V.H.A.*, [68 Nev. 84](#), 94, 227 P.2d 206 (1951); *State ex rel. Brennan v. Bowman*, *supra* at 333. Unlike the fact pattern in those two cases, where the court held that the statutes under consideration imposed no county liability on bond issues, [NRS 271.495](#) does put a charge on the city’s tax funds for improvements under Chapter 271 of NRS. While the underlying purpose of Chapter 271 is the construction of improvements, generally considered a public purpose, the proposed municipal ordinance, by its terms, transmutes the public purposes of Chapter 271 into a publicly financed private project for the private corporation which stands to specially benefit from the terms of the proposed ordinance.

By canceling the private corporation’s past assessment debt and by allowing the canceling of its future assessment debt, with the moneys for issued bonds to be paid by the city’s general fund or possible future tax levies, it is the opinion of this office that the proposed ordinance requires the city to loan its credit in aid of a corporation and, therefore, is contrary to Article 8, Section 10 of the Nevada Constitution.

Having established, at least to our satisfaction, the illegality of the proposed ordinance under the state constitution, we may now review the city council’s duty, if any, to consider the enactment of the proposed ordinance or to submit it to a vote of the people pursuant to [NRS 295.215](#). Under subparagraph 1 of this statute the city council is required to consider the enactment of an ordinance proposed by initiative petition, assuming the petition is sufficient as to

form and number of signatures. In the event the city council fails to adopt the ordinance within sixty days after submission, the proposed ordinance must be submitted to a vote of the people within one year after the council has failed to enact the ordinance.

In *State ex rel. Davies v. Reno*, supra, a petitioner demanded a writ of mandamus to compel the city council to submit a proposed ordinance offered by initiative petition to the voters. As previously noted, the court ruled that the proposed ordinance, if enacted, would be void as providing for a special benefit when a general law would be proper. In considering whether the city council still had to perform the duty of submitting the proposed ordinance to the voters, the court stated:

But a so-called proposed ordinance in proper form, that could never be an ordinance in substance, is not a proposed ordinance any more than an act of a legislature in violation of the constitution would be a statute. The initiative and referendum provisions of the city charter provide an additional method for the adoption of ordinances, but the fact that such method is pursued adds no additional validity to the ordinance. If the ordinance would be void if adopted by the city council, the infirmity would not be cured by its adoption by a vote of the electors of the city. [Cites omitted.] The writ prayed for is denied. *State ex rel. Davies v. Reno*, supra, at 338.

*State ex rel. Davies v. Reno*, supra, was cited with approval by the Supreme Court in *Caine v. Robbins*, [61 Nev. 416](#), 425-426, 131 P.2d 516 (1942). in which the court affirmed the issuance of an injunction which enjoined a county clerk from submitting an initiative petition measure to the voters on the grounds the ordinance, if adopted, would be void for want of an enacting clause. The court held that a minority of voters, i.e., the signers of the petition, should not be permitted to set into motion the legal machinery for the enactment of a measure which would be void, with its consequent injury to the taxpayers. *Caine v. Robbins*, supra at 426.

### CONCLUSION

Therefore, while Article 19, Section 4 of the Nevada Constitution permits special legislation generally to be enacted by municipalities through initiative petitions, such special legislation is subject to the provisions of the remainder of the constitution, and only special legislation which does not conflict with the remainder of the constitution may enacted. Special municipal legislation which would confer a financial benefit on a private corporation through the expenditure of public funds is not, in the opinion of this office, valid legislation under Article 1, Section 8 and Article 8, Section 10 of the Nevada constitution. In the opinion of this office, the ordinance proposed to the North Las Vegas City Council by the initiative petition in this matter is contrary to those two provisions of the constitution.

Accordingly, it is also the opinion of this office that the North Las Vegas City Council has no duty or obligation under [NRS 295.215](#) to consider the enactment into law, or to submit to the people for their enactment, a proposed ordinance offered by an initiative petition which would, if enacted, be contrary to the Constitution and laws of the State of Nevada or the city charter.

Respectfully submitted,

RICHARD H. BRYAN, *Attorney General*

By DONALD KLASIC, *Deputy Attorney General*

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**OPINION NO. 79-4 Criminal Appeals From Municipal Court—[NRS 189.010](#) and [189.020](#)**