



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

April 15, 2011

OPINION NO. 2011-04

CLARK COUNTY; FUNDS; POLICE: The number of police officers funded by sources other than the revenue received under the Act must be at least the same number of officers as were funded and supported prior to the time that the Act became effective on October 1, 2005.

Nicholas G. Vaskov, Acting City Attorney
City of North Las Vegas
2200 Civic Center Drive, Suite 110
North Las Vegas, NV 89030

Dear Mr. Vaskov:

By letter dated June 14, 2010, you have requested an opinion regarding Sections 13 and 13.5 of the Clark County Sales and Use Tax Act of 2005, as amended in 2007 (Act).

BACKGROUND

Because of increased population and rising crime, the voters of Clark County were asked to approve an advisory question in November 2004 which asked "[d]o you support an increase in sales and use tax in Clark County of up to one-half of one percent for the purpose of hiring and equipping more police officers to protect the citizens of Clark County?" General Election Ballot, Question No. 9 - Advisory - 2004 Public Safety. The advisory question passed by an overall margin of approximately three percent. *Hearing on A.B. 418 Before the Senate Committee on Taxation*, 2005 Leg., 73rd Sess. 13 (May 3, 2005).

During the legislative hearings, a presentation and exhibits provided the legislators with information illustrating how the funding would increase the ratio of police officers to citizens in each of the five police departments over the first ten years of the increased sales tax. *Hearing on A.B. 418 Before the Assembly Committee on Growth and Infrastructure*, 2005 Leg., 73rd Sess. 3 (April 5, 2005), Exhibit B. In order to ensure that the overall number of police would not be reduced, the legislation included the statement that the “proposed use will not replace or supplant existing funding for the police department.” Act of June 3, 2005, ch. 249, § 13(1)(b), 2005 Nev. Stat. 915 (A.B. 418).

As a result, during the 2005 Legislative session, A.B. 418 was enacted as the Clark County Sales and Use Tax of 2005. The funds raised through the additional sales tax were to be allocated to the police departments in Clark County¹ in the same ratio that the population served by each police department bears to the total population of the county. Act of June 3, 2005, ch. 249, § 9, 2005 Nev. Stat. 914.

To prevent the funds raised through the tax from being diverted to another use, the Legislature declared that 80 percent of any additional police officers employed and equipped pursuant to this Act were to be assigned to uniform operations in marked patrol units in order to deter crime by showing an increased presence in the community. Act of June 3, 2005, ch. 249, § 2(5), 2005 Nev. Stat. 913. The Act additionally requires that all funds raised through the sales tax shall only be used as approved pursuant to section 13 of the Act. *Id.* at § 9(3)(b), 2005 Nev. Stat. 914. Section 13 of the Act requires that the proposed use of the money conform to all provisions of the Act and that the proposed use will not replace or supplant existing funding for the police department. *Id.* at § 13(1), 2005 Nev. Stat. 915.

In 2007, some legislators were concerned that the money collected through the increased sales tax was not being used to increase the police presence on the streets. Act of June 3, 2005, ch. 545, § 13.5, 2007 Nev. Stat. 3422. The Legislature amended the Act with Section 13.5 which requires “any governing body that received such revenue to provide a report to the director of the Legislative Counsel Bureau for transmission to members of the Legislature” in order to make sure that the funds were not being diverted to other uses. *Hearing on A.B. 461 Before the Assembly Committee on Taxation*, 2007 Leg., 74th Sess. 25–30 (April 10, 2007). The legislation sunsets in 2025.

¹ Boulder City, Mesquite, North Las Vegas, Henderson, and the Las Vegas Metropolitan Police Department.

QUESTION ONE

What constitutes "supplanting" under the Act?

ANALYSIS

When the plain language of the statute is clear and unambiguous on its face, it is not necessary to go beyond the language in determining the legislative intent. *City of N. Las Vegas v. Eighth Judicial Dist. Court*, 122 Nev. 1197, 1205, 147 P.3d 1109, 1115 (2006).

Pursuant to the plain language of the Act, supplantation does not occur when:

the amount approved for expenditure by the body for the fiscal year for the support of the police department, not including any money received or expended pursuant to this Act, is equal to or greater than the amount approved for expenditure in the immediately preceding fiscal year for the support of the police department.

Act of June 3, 2005, ch. 249, § 13(3), 2005 Nev. Stat. 915.

CONCLUSION TO QUESTION ONE

Supplantation occurs under the Act when a police department reduces its budget to less than the amount approved for expenditure for support of the police department in the preceding fiscal year. For comparison purposes, the measure of the expenditure for the immediately preceding fiscal year does not include funds received pursuant to the Act.

QUESTION TWO

What constitutes the base year for the determination required under Sections 13(1)(b), 13(3), and 13.5(3)?

ANALYSIS

"When a statute is susceptible to but one natural or honest construction, that alone is the construction that can be given." *Building and Constr. Trades Council of N. Nev. v. State of Nev., ex rel. Pub. Works Bd.*, 108 Nev. 605, 610, 836 P.2d 633, 636 (1992).

Section 13(1)(b) of the Act states that “[t]he proposed use will not replace or supplant existing funding for the police department.” Act of June 3, 2005, ch. 249, § 13(1)(b), 2005 Nev. Stat. 915. Section 13(3) provides the method to determine whether supplantation has taken place under the Act, which is by comparison of the funding for the present fiscal year to the prior fiscal year. Act of June 3, 2005, ch. 249, § 13(3), 2005 Nev. Stat. 915. Thus Section 13 of the Act provides a clear and unambiguous statement that the base year to be used to determine whether the proposed use will replace or supplant existing funding is the prior fiscal year.

Section 13.5 was added to the Act in 2007 and requires each police department receiving funds under the Clark County Sales and Use Tax Act of 2005 to submit a report quarterly to the Legislative Counsel Bureau. The report allows the Legislature to ensure that the funds made possible by A.B. 418 will not be diverted to other uses. *Hearing on A.B. 461 Before the Assembly Committee on Taxation, 2007 Leg., 74th Sess. 25 (April 10, 2007)*. Thus Section 13 and 13.5 of the Act are separate and independent provisions. Section 13 of the Act addresses the approval of the expenditure of the proceeds from the tax while Section 13.5 addresses the information that must be reported to the Legislature on a quarterly basis.

CONCLUSION TO QUESTION TWO

The base year to be used to determine whether the expenditure for the proceeds from the sales tax raised through the Act complies with Section 13(1)(b) and Section 13(3) of the Act is the immediately preceding fiscal year, and the base year to be used in order to comply with the quarterly reporting required pursuant to Section 13.5 of the Act is the most recent fiscal year prior to October 1, 2005.

QUESTION THREE

If a local government budgeted additional funding in support of the police department after the 2005 budget year (not including monies received under the Act), is a new base year established pursuant to the Act for purposes of supplantation?

CONCLUSION TO QUESTION THREE

Our resolution to Questions One and Two also answer Question Three.

QUESTION FOUR

What effect did Assembly Bill 461 (2007) have in terms of defining the base year for purposes of determining supplantation?

CONCLUSION TO QUESTION FOUR

Our resolution to Question Two also answers Question Four.

QUESTION FIVE

Are there any metrics or measurements other than "existing funding for the police department" used to determine whether supplantation occurs under the Act?

ANALYSIS

When the plain language of the statute is clear and unambiguous on its face, it is not necessary to go beyond the language in determining the legislative intent. *City of N. Las Vegas v. Eighth Judicial Dist. Court*, 122 Nev. 1197, 1205, 147 P.3d 1109, 1115 (2006). Section 13(1)(b) of the Act clearly and unambiguously states: "The proposed use of the funds will not replace or supplant existing funding for the police department." Act of June 3, 2005, ch. 249, § 13(1)(b), 2005 Nev. Stat. 915.

CONCLUSION TO QUESTION FIVE

The only metric or measurement identified by the Legislature to determine whether supplantation occurs under the Act is the "existing funding for the police department" and no additional metrics or measurements are specified.

QUESTION SIX

Does the Act require local governments to maintain a minimum number of police officers funded and supported by revenue other than revenue received under the Act?

ANALYSIS

"When construing a specific portion of a statute, the statute should be read as a whole, and, where possible, the statute should be read to give meaning to all of its parts." *Bldg. and Constr. Trades Council of N. Nev. v. State of Nevada, ex rel. Pub. Works Bd.*, 108 Nev.605, 610, 836 P.2d 633, 636 (1992).

Section 9 of the Act requires that the money be used in accordance with Section 13 of the Act in order to employ and equip "additional" police officers. Act of June 3, 2005, ch. 249, § 9, 2005 Nev. Stat. 914. Section 13(1)(b) of the Act prohibits supplanting, which places the various police departments on notice that a reduction in the expenditure to support a police department for a given fiscal year, as compared to the immediately preceding fiscal year, would violate the Act. Act of June 3, 2005, ch. 249, § 13(1)(b), 2005 Nev. Stat. 915. Thus in order to comply with all sections of the

Nicholas G. Vaskov
April 15, 2011
Page 6

Act, a department must maintain at least the same number of officers funded through revenue not received under the Act that the department employed in the fiscal year prior to October 1, 2005.

CONCLUSION TO QUESTION SIX

The number of police officers funded by sources other than the revenue received under the Act must be at least the same number of officers as were funded and supported prior to the time that the Act became effective on October 1, 2005.²

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: 
VIVIENNE RAKOWSKY
Deputy Attorney General
Business and Taxation
(702) 486-3103

VR:TAP

² It should be noted that the Act does not contemplate a fiscal crisis and the resulting budget cuts which could reduce funding from sources other than the Act to below the pre-2005 levels. The decrease in funding and the resulting decrease in the number of police officers funded by sources other than the Act to less than the pre-2005 levels could constitute supplantation. This possibility could be addressed by the Legislature through statutory amendment.