

Pursuant to NRS a joint meeting of the Nye County Board of Commissioners, Nye County Board of Highway Commissioners, Nye County Licensing and Liquor Board, the Nye County Board of Health, the Governing Body of the Unincorporated Town of Pahrump, the Governing Body of the Unincorporated Towns of Beatty, Belmont, Gabbs, Manhattan, and Railroad Valley, and the Board of Trustees for the Pahrump Pool District, was held at 10:00 a.m. in the Commissioners' Chambers, 101 Radar Road, Tonopah, Nevada 89049.

John Koenig, Chair
Debra Strickland, Vice-Chair
Lorinda Wichman, Commissioner
Donna Cox, Commissioner
Leo Blundo, Commissioner
Sandra L. Merlino, Ex-Officio Clerk of the Board
Chris Arabia, District Attorney
Sharon Wehrly, Sheriff
Tim Sutton, County Manager

Also present: Lorina Dellinger, Assistant County Manager; Kelly Sidman, Deputy Clerk; Savannah Rucker, Comptroller; Samantha Tackett, Administrative Manager

Not Present: Sharon Wehrly, Sheriff

Commissioners Wichman and Cox were present via telephone.

1. Pledge of Allegiance

The Pledge was recited.

2. GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first).

John Bosta did not think public comment should be heard before the Board approved the agenda item as it was a way to circumvent the Open Meeting Law. He thought the public had the right to a discussion with the Board after a motion and second.

3. 10:00 – For Possible Action – Discussion and deliberation to approve the audits of fiscal year 2017-2018 for Nye County and all component units of Nye County conducted by Daniel McArthur, LTD.

Daniel McArthur began his review by noting key issues contained in the audit opinion letter. Those issues included the financial statements were the responsibility of County management, not Dan McArthur, and the audit statements were fairly presented. During the audit process some reconciling problems were discovered, but not missing money, and those had been corrected and fixed. He then discussed the correction of

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errors section of the opinion letter. A couple of years ago the rule regarding public employment retirement system liabilities was changed. The State PERS system was responsible for implementing new rules, but the information on this change was not given to local governments in time for the June 30, 2017, financial statements, which resulted in an error in that statement. That had been corrected in this audit and was not a County error. Mr. McArthur then discussed changes to the OPEB liability estimation which added \$45 million liability to the books of the County which did not exist before this change because of the method used to make the calculation.

Mr. McArthur directed the Board to page 14 of the audit which showed a combined balance sheet. The County general fund ending fund balance was \$10,174,000.00, which Mr. McArthur said put the County in a strong financial position from prior years and the County was in good financial condition. Under restricted fund balance was a line item entitled unincorporated towns with a balance of \$788,000.00 related to marijuana money. There had been discussion whether that belonged to the County or the unincorporated towns. Based on legal documents he had seen and an opinion from the LCB that money belonged to the unincorporated towns. That money sat in the general fund, was not spent, and was shown as restricted after that opinion.

Mr. McArthur then discussed compliance with law and regulation, i.e., budget expenditures. The law stated no officer could spend money in excess of the money appropriated for a specific function like general government, public safety, etc. A line item inside of a budget could be overspent as long as other categories in the function were not overspent. Four areas were in excess of budget, three of which were not deemed technical violations of the law because they were expenditures mandated by law. The function that was in violation was the public safety function due to the Sheriff's Office overspending its augmented budget by \$440,000.00.

Mr. McArthur discussed the pension plans. On the bottom of page 64 was a table showing pension liability costs of \$78 million, \$52 million and \$29 million. He explained that because of accounting changes that took place several years ago there was a requirement to show in the financial statements the County's share of the unfunded PERS liability existing statewide. He said this was just an estimate depending on how well the PERS investments did. When he put those estimates in it showed a \$52 million liability shared between several funds within the County, one of which was the Pahrump ambulance fund. When their share was placed on their financial statements it resulted in negative equity of \$1.5 million.

Mr. McArthur talked about the retiree insurance shown on page 68. He said this was a concern and was basically estimated the same way as the pension liability. The liability right now showed as \$65,181,000.00. That liability was never shown on the books of

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any governmental entity and there had been no pre-funding. He said it was costing \$1.9 million right now and was going to go up each year.

Mr. McArthur then reviewed the schedule of findings and responses. He said the State required a corrective action plan within 30 or 45 days after the report was delivered to the County and sent to the Department of Taxation (DTAX). Mr. McArthur knew the Comptroller would come back to the Board with that. As required by NRS he advised he did encounter cash problems during the audit, there were no uncorrected misstatements in the financial statement, there were no disagreements with management during the audit, and he did not consult with any attorneys or CPAs concerning the audit.

Lastly, Mr. McArthur reviewed the revenues. Total revenues for governmental activities this year was \$72 million compared to the previous year at \$61 million. There was also a significant increase in net proceeds this year, fuel taxes were up about \$1.2 million, and CTAX was up significantly compared to prior year. Total expenditures were shown as \$64,935,000.00 for FY18 versus \$59 million for FY17. Mr. McArthur just wanted to point out the comparisons shown and noted without that \$45 million change in the estimate for retiree insurance the bottom equity would look stronger.

Commissioner Blundo asked Mr. McArthur and Tim Sutton about what recourse could be taken with the Sheriff' Office. He said it was the people's money and there was a need to be a conservative.

Mr. McArthur said NRS 354.626 indicated if an officer employee of a local government willfully overspent more money than authorized in the budget then they were subject to malfeasance of office and they could be subject to removal if they willfully overspent. As far as a backstop for the Commissioners to try to control that, that was the only remedy he was aware of. He reminded the Board this would get sent to DTAX and the County would have to provide a corrective action letter on the plan to prevent that violation next year. The officers could also be brought to a hearing to provide answers as to why the money was being overspent.

Commissioner Blundo wanted to get that meeting set up to see what the Sheriff had to say and he would like to be a part of that. He asked if it was true that Mr. McArthur had given the Treasurer a starting point for FY2018 so he could get the reconciliations completed.

Mr. McArthur said the June, 2018 completed balanced reconciliation had been provided. Mr. McArthur said he would get with the office this week and talk about the reconciliation process with him.

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Commissioner Koenig thanked Mr. McArthur for helping to get caught up with the fiscal year. Regarding OPEB, he said there were other things that people may or may not know. He was approached by a lady who was presently retired from the County along with her husband who gave him some additional insight which would be discussed at some point.

John Bosta asked that his written document be included in the minutes (see Attachment 1). He discussed SB422 and SB487 which said marijuana money would be collected by the Treasurer and deposited into the towns. Since 2015 that money had been deposited in the County general fund, which was an absolute violation of the law. Mr. Bosta requested to see all communications between DTAX, Commissioner Wichman and the County in writing as he did not believe she had documents stating the County was following what the State said. He would submit a Freedom of Information Act request if needed and thought there was no transparency.

Commissioner Blundo made a motion to approve and accept the audit for fiscal year 2017-2018; seconded by Commissioner Strickland; 5 yeas.

SITTING AS THE GOVERNING BODY OF UNINCORPORATED TOWN OF PAHRUMP

4. 10:00 – For Possible Action – Discussion and deliberation to approve the audits of fiscal year 2017-2018 for the Town of Pahrump conducted by Daniel McArthur, LTD.

Commissioner Strickland made a motion to approve the Town of Pahrump audit conducted for fiscal year 2017-2018; seconded by Commissioner Blundo; 5 yeas.

AS THE BOARD OF TRUSTEES FOR THE PAHRUMP POOL DISTRICT

5. 10:00 – For Possible Action – Discussion and deliberation to approve the audits of fiscal year 2017-2018 for the Pahrump Pool District conducted by Daniel McArthur, LTD.

Commissioner Blundo made a motion to approve the audit of fiscal year 2017-2018 for the Pahrump Pool District conducted by Dan McArthur; seconded by Commissioner Strickland; 5 yeas.

6. GENERAL PUBLIC COMMENT (up to three-minute time limit per person.)
Action will not be taken on the matters considered during this period until
specifically included on an agenda as an action item (second).

John Bosta said the budget for Amargosa Valley was held up because of the audit of the County's budget. He wanted to know if the town's budget had been forwarded and if the money for marijuana was put into the town's account. He pointed out that the Pahrump budget did not include the marijuana money and Mr. Bosta thought since 2017 the County had purposely violated the law by circumventing how they were supposed to deposit the money into the towns.

Horace Carlyle asked that his comments be reflected in the minutes. He said the County supported public health, safety and welfare by pursuing the BDR for possible creation of a fire district primarily beneficial for the areas outside the Pahrump fire department and Pahrump basin valley. This recommendation was made by Vance Payne in 2016 and two and a half years later there was finally a BDR. Mr. Carlyle also believed it would be beneficial to all rural counties in Nevada, but there had to be a plan. There was a short time period with the State Legislature to get support and he suggested using NACO. He thought it could be passed, but if nothing was done it would die. He also thought it was a shame the Board did not support autopsy cost reduction.

Commissioner Blundo read a statement about Cassandra Selbach.

7. ADJOURN

Commissioner Koenig adjourned the meeting.

APPROVED this _____ 19 _____ day ATTEST:
Of _____ March _____, 2019.

Lorinda A. Wichman
Chair

Keece L. Sedman
Nye County Clerk / Deputy

I request that my comments are reflected in the minutes and I submit a copy of my prepared written remarks to be included in the minutes.

Nevada is a Dillon Rule State. In a case from 1868 and in later treatises on the law governing local governments, former Chief Justice John F. Dillon of the Iowa Supreme Court developed a common-law rule on local governmental power known as Dillon's Rule, which defines and limits the powers of local governments. **Under Dillon's Rule, a local government is authorized to exercise only those powers which are: (1) expressly granted; (2) necessarily or fairly implied in or incident to the powers expressly granted; or (3) essential to the accomplishment of the declared objects and purposes of the local government and not merely convenient but indispensable. Dillon's Rule also provides that if there is any fair or reasonable doubt concerning the existence of a power that doubt is resolved against the local government and the power is denied.** (Merriam v. Moody's Ex'rs, 25 Iowa 163, 170 (1868); 1 John F. Dillon, Commentaries on the Law of Municipal Corporations § 237 (5th ed. 1911))

There are no constitutional or statutory provisions in Nevada relating to home rule authority for county governments, and therefore Nevada is considered a state without home rule for local governments. In other words, county and city governments generally have only those powers that are granted to them by the Legislature.

The Fiduciary Funds for Marijuana and Medical Marijuana for the Town of Amargosa have not been deposited in the Town's Account by Nye County in violation of AB 422 and SB 487 sections 15 and 18.5.

The LCB's letter of September 21, 2018 Conclusion:

Based on the plain language of sections 15 and 18.5 of SB487 and well established rules of statutory construction, it is the opinion of this office that section 18.5 of SB487 governs the imposition of business license fees and taxes on marijuana establishments and medical marijuana establishments located in unincorporated towns. If a marijuana establishment or medical marijuana establishment is located in an unincorporated town for which a board of county commissioners is the governing body, it is the opinion of this office that the board of county commissioners of the county in which the unincorporated town is located is authorized to impose a business license fee or tax on such an establishment. However, if the town board form of government has been established for an unincorporated town pursuant to NRS 269.16 to 269.022, inclusive, it is the opinion of this office that the town board of the unincorporated town is the entity authorized to impose a business license fee or tax on a marijuana establishment or medical marijuana establishment located in the unincorporated town. **Finally, because any money collected or received from a business license fee or tax imposed on marijuana establishments or medical marijuana establishments located in an unincorporated town is money collected or received pursuant to chapter 269 of NRS, it is the opinion of this office that NRS 269.095 prohibits the deposit of the money in the county general fund and, instead, requires any such money to be kept separate from other money of the county and used for the sole benefit of the unincorporated town in which the money is collected.**

The County's adoption of **Code 5.32.060 - FEES; DISBURSEMENT;** The two percent (2%) monthly business license fees collected by virtue of this chapter shall be delivered by the licensee or authorized agent to the County Treasurer, and shall be kept by the Treasurer in the General Fund for the sole use and benefit of the County, and shall be paid out by order of and under the direction of the Board of County Commissioners in the same manner as other General Fund disbursements are made. and **Code Chapter 17.06 MARIJUANA ESTABLISHMENTS; ZONING REQUIREMENTS; 17.06.010: INTENT; GENERALLY:** A. The intent of this chapter is to establish the zoning, land use and development requirements applicable to marijuana establishments, including retail and medical marijuana uses, as authorized under chapter 453A of Nevada state law for all areas within Nye County, including those areas within the Pahrump regional planning district'.

BOTH CODES; 5.32.060 and 17.06.010 VIOLATE AB422 and SB487 pursuant to the Dillon Rule of the State of Nevada.

Marijuana License for a total of \$524,954 is included on page 18, Major Fund-General Fund. However, there is record of the expenditures pages 20-25 for the Marijuana revenue.

Page 17 item 7(C)(5) the appropriations of marijuana funds to be transferred between functions, funds, or contingency accounts transferred by the County Comptroller if the County Commissioners are advised of the action at the next regular meeting; and the action is recorded in the official minutes of the meeting has not been followed, which is a violation of the statutes.

Page 60 As of June 30, 2018 PERS total liability of **\$52,132,951** and Page 69 OPEB total liability **\$60,781,068**. **These two funds added together is a liability of \$112,914,019.**

Pages 74, 95, & 106 Marijuana Taxes (fees) are included in **Licenses and permits.**

Pg 106 **Public Improvement \$201,062.**

Pg 129 **License and permits-Special license fees- 2018 \$110,313, 2017 \$85,000 for a total of \$195,312- Is this Marijuana fees?**

Pg 171 Sheriff Special Revenue Fund (10234) shows Negative Revenue from Tonopah (\$83,500), Amargosa Valley (\$23,970), Round Mountain (\$47,063) for a **total of (\$91,793)**. Why didn't these towns make Actual Payments?

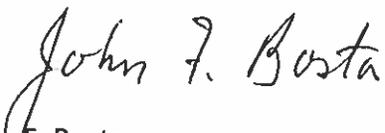
Pg 191 the Water District Special Revenue Fund (61101) has **Tax assessment -2018 \$286,819, 2017 \$281,613. There is no adopted Ordinance to collect this Tax. Is this another violation of the Statutes?**

Pg 199 **Beatty Town Special Revenue Fund (24101) Licenses and permits-Marijuana License \$1,255.**

Pg 222 **Pahrump Town Special Revenue Fund (25101) Licenses and permits-Marijuana License \$50,946.**

Pg 256 **Pahrump Town Public Safety Sales Tax Fire Special Revenue Fund (25235)- Excess (deficiency) of revenues over expenditures (\$1,275,407).**

Respectfully submitted for the Minutes,



John F. Bosta