



Washoe County District Attorney

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

MEMORANDUM

TO: Washoe County Board of County Commissioners

FROM: Paul Lipparelli
Assistant District Attorney *Paul Lipparelli*

RE: Legal Authority of General Improvement Districts in Nevada

DATE: August 21, 2015

The following is a summary of the legal relationship between boards of county commissioners and the general improvement districts within the county.

History and Scope of GID Statutes.

The General Improvement District Law (Chapter 318 of the NRS) was enacted in 1959 to “provide various urban type services to areas where such services were not available and could not be provided by general purpose government.”¹ In 1965 Ch. 318 was amended to require a finding that the “public convenience and necessity require creation of the district and that such creation is economically sound and feasible.”²

The board of county commissioners is vested with the authority to create districts within the county. NRS 318.050(1). But, once they are in existence, GIDs are independent legal entities with their own perpetual existence. NRS 318.105. The General Improvement District Law gives many powers to GIDs which are not subject to direct review or oversight of county boards of county commissioners.

- GIDs have the power to sue and be sued. NRS 318.115.
- The boards of trustees have the power to “manage, control and supervise all the business and affairs of the district” and to “acquire, improve, equip, operate and maintain any district project.” NRS 318.175.
- Boards of trustees have the power to operate, maintain and repair the improvements acquired by the district. NRS 318.145.

¹ Creation, Financing and Governance of General Improvement Districts, Bulletin No. 77-11, Legislative Commission of the Legislative Council Bureau of the State of Nevada, September 1976 (“Bulletin No. 77-11”), p. 8. <https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/1977/Bulletin77-11.pdf>

² Bulletin No. 77-11, p. 9.

- GIDs have the power to retain agents, employees, servants, engineers and attorneys. NRS 318.180.
- GIDs and the owners of property within them have the power to change the boundaries of the district (NRS 318.256 -- 318.272).
- GID boards also have implied powers described by NRS 318.210 as “all rights and powers necessary or incidental to or implied from the specific powers granted in [Chapter 318 of NRS.]”

The independence of a GID also derives from the control of the board of trustees over the GID revenue sources. NRS 318.197 through 318.202 grant specific power to GID boards of trustees to set rates, fees, tolls and charges and NRS 318.230 provides that counties must levy the tax rate on assessed property within the district as set by the district. GIDs have the authority to borrow money and issues securities (bonds). NRS 318.275 through 318.350.

The independence of GIDs does not relieve them of their responsibilities, along with other local governments like cities and counties, to comply with a variety of state laws that express and limit the use of governmental power and provide citizens and taxpayers with certain rights. A GID board of trustees may direct its staff to spend GID money and use GID powers consistent with those laws. A specific example is NRS 354.626 which provides that it is unlawful for a public body or any officer, office, department or agency of a public body to "expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, in excess of the amounts appropriated for that function...." Other statutes are summarized below.

<u>Statute or Law</u>	<u>NRS Chapter</u>	<u>Enforcement Responsibility</u>
Open Meeting Law	Ch. 241	Attorney General
The public records statutes	Ch. 239	Private citizen through court action
The Local Government Budget and Finance Act	Ch. 354	Protest at public hearings on budget adoption, and Department of Taxation and Committee on Local Government Finance
Local Government Purchasing Act	Ch. 332	Protests at public hearings, potentially followed by private lawsuit
Public works statutes	Ch. 338	Protests at public hearings, potentially followed by private lawsuit and State Labor Commissioner

Individual GID officials are also responsible for compliance with the Ethics in Government Law (Ch. 281A) and elections laws (Ch. 293). The Washoe County Board of County Commissioners does not possess the power to pursue a GID that fails to abide by the laws summarized above. Instead, as noted, either private citizens, disappointed bidders or State agencies have the ability to pursue compliance.

Washoe County GIDs.

Washoe County has several GIDs: Gerlach GID, Grand View Terrace Water Board (formerly Black Springs), Incline Village GID³, Palomino Vally GID, Sun Valley General Improvement District and the Verdi TV District.⁴ The Incline Village General Improvement District (IVGID) is the largest GID in Washoe County (by budget) and was created June 1, 1961.⁵ In 1965 Washoe County amended IVGID's enabling ordinance to add recreation facilities to its responsibilities. In its 2015-16 budget, IVGID showed \$39M in expenditures and uses.⁶ The next largest GID (by budget) is the Sun Valley GID. It was formed in 1967 to provide water and sewer services and expanded its services to garbage services in 1990⁷ and recreation (parks and a pool) in 2009⁸. Sun Valley GID budgeted for \$6.5M in estimated expenses for 2015-16.⁹

Nevada Legislative Studies.

The Nevada Legislature has conducted at least 2 formal reviews of the GID laws since 1959.¹⁰ In 1975 the Nevada Legislature considered 10 bills dealing with GID and decided a general review of the subject was needed. Following that legislative session a Legislative Commission subcommittee produced Bulletin No. 77-11. These are a few of the findings of the 1976 study:

- A number of districts created that are not financially sound, that are performing services that should be provided by counties or that have been created in close proximity to existing districts providing the same or similar services.¹¹
- Some GIDs failed in some counties because Ch. 318 does not provide for the county to have supervisory or advisory power over a GID once it is created.¹²

³ The Crystal Bay GID was merged into IVGID in April of 1995 (Ord. No. 928).

⁴ The Horizon Hills GID was dissolved in January of 1997 (Ord. No. 964) and The South Truckee Meadows GID was dissolved as part of the merger with the Truckee Meadows Water Authority in December of 2014.

⁵ Washoe County Ordinance No. 97, Bill No. 57.

⁶ https://www.yourtahoeplace.com/uploads/pdf-ivgid/2015-2016_Budget_Book.pdf, p. 37

⁷ Ord. No. 806.

⁸ Ord. No. 1418.

⁹ http://svgid.com/Files/dLink/052115_08.pdf

¹⁰ See, Bulletin No. 77-11, and Background Paper 83-4 (General Improvement Districts), <https://www.leg.state.nv.us/Division/Research/Publications/Bkground/BP83-04.pdf>

¹¹ Bulletin No. 77-11, p. 9.

¹² Bulletin No. 77-11, p. 16.

- Chapter 318 of NRS provides flexibility to meet localized service demands and has satisfied the purposes for which it was created by making possible the provision of various facilities and services to areas that were outside the ability of general purpose government to provide.¹³
- A fundamental question is whether county commissioners should be given the power to create improvement districts and the responsibility to run them as county subordinate service districts.¹⁴

The Nevada Legislature also analyzed taxing districts in Nevada in 1994.¹⁵ The Legislative Subcommittee recommended that the Special District Control Law (Ch. 308) be amended to provide for a 10-year review and report to the county commission and the Legislature by any taxing district of the revenues collected from all taxes and a projection of any debt expected in the ensuing 10 years. The bulletin also recommended requiring districts to produce a feasibility report that includes staffing and facilities plans, the fiscal effects of other governments and a five-year projection of a district's finances before a new district is created. Those recommended changes to Ch. 308 were not adopted by subsequent legislatures. However, the 1995 Nevada Legislature passed a law that requires local governments (including existing GIDs) which have outstanding debt or propose to issue any debt or special elective tax to submit to the Nevada Department of Taxation and the Washoe County Debt Management Commission a complete statement of current and contemplated general obligation debt and special elective taxes; a report of current and contemplated debt and special assessments and retirement schedules; a written statement of its debt management policy; and its plan for capital improvement for the ensuing 3 fiscal years. NRS 350.0035 (SB 248).

The Limited Oversight and Authority over GIDs.

Service Plans. Eight years after the General Improvement District Law was enacted the Nevada Legislature passed the Special District Control Law of 1967 (Ch. 308) to “prevent unnecessary proliferation and fragmentation of local government, to encourage the extension of existing districts rather than the creation of new districts and to avoid excessive diffusion of local tax sources.” NRS 308.010. The central feature of the Special District Control Law is the requirement that a service plan be created prior to the formation of any new district. NRS 308.030. A service plan includes a financial survey, preliminary engineering or architectural survey showing how the proposed services are to be provided and financed, maps of the proposed district boundaries, an estimate of the population and assessed valuation of the proposed district. The service plan has to describe the facilities to be constructed, the standards of such

¹³ Bulletin No. 77-11, p. 17.

¹⁴ Bulletin No. 77-11, p. 18.

¹⁵ Study on the Laws Governing Taxation and the Creation of Taxing Districts, Bulletin No. 95-1, Legislative Commission of the Legislative Council Bureau of the State of Nevada, September 1994 (“Bulletin No. 95-1”).
<https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/1995/Bulletin95-01.pdf>

construction, the services to be provided by the district, an estimate of costs, including the cost of acquiring land, engineering services, legal services, proposed indebtedness, annual operation and maintenance expenses, and other major expenses related to the formation and operation of the district. NRS 308.030. Any change to the service plan has to be approved by the board of county commissioners which also has the power to enjoin any unreasonable departure from the approved service plan. NRS 308.080. The statutes requiring a service plan apply to general improvement districts (“GIDs”) initiated after 1967. A change in State law would be required to subject existing GIDs to the service plan requirements.

Dissolution and Merger. The board of county commissioners can dissolve, consolidate or merge a GID if it finds that it is in the “best interests of the county and of the district” after determining that the services of the district are no longer needed or can be more effectively provided by another government. NRS 318.490(1). Upon dissolution, the county must assume the outstanding indebtedness of the district. However, the board of trustees of the GID may overrule the board of county commissioners on merger, consolidation or dissolution. NRS 318.490(3). Also, if a majority of the property owners file written protests, the district shall not be dissolved, merged or consolidated. NRS 318.495.

Corrective Action. Pursuant to NRS 318.515, upon notification by the Nevada Department of Taxation or upon receipt of a petition signed by 20 percent of the qualified electors of the district, that a GID is not being properly managed, the board of trustees of the district is not complying with the provisions of this chapter or with any other law, the board of county commissioners shall hold a hearing to consider the notification or petition.¹⁶ After proper notice of such a hearing is given and after “full consideration to all persons desiring to be heard,” the board of county commissioners is required to:

- (a) adopt an ordinance constituting the board of county commissioners, ex officio, as the board of trustees of the district;
- (b) adopt an ordinance providing for the merger, consolidation or dissolution of the district (to which the board of trustees or property owners could presumably object pursuant to NRS 318.490 and NRS 318.495);
- (c) file a petition in the district court for the county in which the district is located for the appointment of a receiver for the district; or
- (d) determine by resolution that management and organization of the district will remain unchanged.

¹⁶ NRS 318.515(1)(c) also provides for the holding a hearing by the board of county commissioners if the Department of Taxation or the property owners’ petition notifies the board that the service plan established for the district is not being complied with. Presumably, a such hearing would be allowed only when a district is required to have a service plan.

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Recall. If property owners and voters within a GID wish to make political change, trustees may be recalled pursuant to the provisions of NRS and the Nevada Constitution. NRS 318.0955.

Removal. The board of county commissioners may remove any GID trustee serving on an appointed or elected board of trustees for cause shown, on petition, hearing and notice thereof by publication and by mail addressed to the trustee. NRS 318.080(6).