


Memorandum

City of Las Vegas Office of the City Attorney

To: Beverly Bridges
City Clerk

From: Bradford R. Jerbic 
City Attorney

CC: Mayor Oscar Goodman
Mayor Pro Tem Gary Reese
Councilman Steve Wolfson
Councilwoman Lois Tarkanian
Councilman Steven Ross
Councilman Ricky Y. Barlow
Councilman David Steinman
Betsy Fretwell, City Manager

Date: March 4, 2009

Re: Referendum and Initiative Petitions Filed December 9, 2008

You have inquired concerning the validity of the referendum petition which seeks reconsideration of Ordinance No. 5830, adopting the redevelopment plan for Las Vegas. You have determined that the petition is sufficient with respect to the number of signatures, but you seek guidance concerning the substantive validity of the proposal.

It is clear that, if the City Council were to repeal Ordinance No. 5830, there would not be sufficient funds to repay the approximately \$23.3 million in bonds that have been issued for existing redevelopment projects plus \$50.8 million in tax increment notes. Nor would there even be a redevelopment agency to meet the repayment obligations. The committee failed to inform the signers of the petition of these impacts.

Under well-established case law, legislation that affects the ability of government to perform a covenant to repay bonds represents an unconstitutional impairment of contractual obligations under the Federal Constitution. See, United Trust Company of New York v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505 (1977). Voter-approved legislation that has such effect is similarly invalid under either state or federal constitutional provisions that protect of the obligations of contract. Continental Illinois National Bank and Trust Company of Chicago v. State of Washington, 696 F.2d 692 (9th Cir. 1992); Ruano v. Spellman, 505 P.2d 447 (Wash. 1973).

In this instance, the obligations of the Redevelopment Agency to bondholders clearly would be impaired if the City Council were to repeal Ordinance No. 5830 or if the voters were to "reject" the ordinance by means of a vote under the referendum.

Therefore, it is the recommendation of this office that your office notify the petitioners of the legal insufficiency of the petition. The City is not obligated to put on the ballot any measure that would be invalid or unconstitutional if approved. Based upon the foregoing, it is the advice of this office that the "Referendum Petition" not be put on the ballot. Further, this memorandum will serve as advice to the City Council that the "Referendum Petition" cannot be adopted by the City Council for the reasons stated herein.

Submitted at City Council

Date 3/4/09 Item 14, 55, 56, 70

You have also inquired concerning the validity of the Initiative Petition. The Initiative Petition proposes the following language:

The People of the City of Las Vegas do enact as follows:

The Las Vegas Taxpayer Accountability Act

Section 1: Voter Approval for Certain City Development Projects.

A new Section 2.340 is added to the City of Las Vegas Charter:

Section 2.340. Voter Approval for Certain City Development Projects.

(1) Notwithstanding any other provision of the Charter or Municipal Code, the following provisions shall apply to any lease-purchase agreement for the construction or remodeling of a building or facility entered into pursuant to Section 2.145 of the City of Las Vegas Charter.

- (a) Annual appropriations of \$2 million or more to satisfy an obligation under any lease-purchase agreement for the construction or remodeling of a city building or facility shall be subject to voter approval.
- (b) the question of whether to make such an appropriation shall be presented to voters at the general municipal election proximately prior to the beginning of the fiscal year in which the obligation under the lease-purchase agreement is due. At such general municipal election, registered voters shall be presented with all proposed appropriations for the ensuing two fiscal years.
- (c) If a majority of the registered voters voting on the question is in favor of the proposed appropriation, the proposal is carried and otherwise the proposal is defeated and the proposed appropriation shall not be made.
- (d) The ballot question for proposed appropriations submitted to the registered voters must contain the amount and due date of the obligation for which each appropriation is proposed and the purpose of the lease-purchase agreement under which the payment is due.

(2) Notwithstanding any other provision of the Charter or Municipal Code, the registered voters of the City of Las Vegas, Nevada are deemed to be the "legislative body" within the meaning of Nevada Revised Statutes Sections 279.586, 279.604, and 279.608 to the exclusion of the City Council of Las Vegas and all other legislative bodies. Any and all redevelopment plans, and material deviations therefrom and amendments thereto, and contracts for redevelopment projects within the meaning of NRS 279.412, must be approved by the registered voters of the City of Las Vegas, Nevada.

A vote of the registered voters on any matter subject to this subsection may take place at any general municipal election, general statewide election or special election called for such purpose.

Article VIII, Section 8.270(2) is amended to read (underline language added; ~~strikethrough language deleted~~):

With the exception of Section 2.340 of this Charter, No other law with respect to the exercise of any power which is granted in this article that provides for an election, requires an approval or in any way impedes or restricts the carrying out of the acts which are authorized by this article to be done may be construed as applying to any proceeding which is taken under this article or act done pursuant to this article, except as is provided in this article.

Section 2: Application.

Subsection (1) of the new Charter Section 2.340 added by this Initiative shall apply to all appropriations described herein after its effective date, regardless of whether the lease-appropriations described herein after its effective date, regardless of whether the lease-purchase agreement was entered into before or after such date.

Section 3: Severance.

Each word, sentence, provision and application of this Section is deemed severable. If any are invalidated by a court of competent jurisdiction, the remainder shall be given full force and effect. The courts are authorized to reform the provisions of this Section in order to ensure their maximum permissible effect.

The term "Legislative Body" is defined in NRS 279.396 as:

. . . the city council, board of county commissioners or other legislative body of a community.

Given the specific statutory definition above, the question becomes whether the "registered voters of the city of Las Vegas" may be a "legislative body" under NRS 279.396. If the answer is "no," then the submitted "Initiative Petition" is in conflict with State law and the Initiative should not be submitted for inclusion on the ballot.

Based on our analysis, we conclude that the legislature did not intend the term legislative body to include all of the registered voters of a particular municipality. The list of "legislative bodies" contained in NRS 279.396 refers to established legislative bodies which clearly have legislative power. (The only legislative power granted to the voters of a municipality is through the initiative and referendum.) To interpret the term "legislative body" as meaning the voters of the city is tantamount to redefining a term which has established meaning given by the legislature. Such action may only be accomplished by an act of the state

legislature.

Further, the Nevada Supreme Court has determined that the powers of the electorate to propose initiatives and referendums is limited to legislative acts, not acts which by their nature are administrative. Nevada has adopted the following test for drawing the distinction between an administrative and a legislative ordinance:

An ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character and referable, but an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is administrative or executive in character, and not referable. Forman v. Eagle Thrifty Drugs and Markets, 89 Nev. 533, 537 (1973) citing Denman v. Quinn, 116 S.W.2d 783, 786, (Tex.Civ.App. 1938).

In Foreman, the Court looked at whether an initiative and referendum which sought to amend the City of Reno's zoning code to prohibit industrial or commercial use of land within 300 feet of a junior high or elementary school. In analyzing whether the proposed initiative and referendum was legislative or administrative, the court applied the Denman test. The court reasoned that whether the citizens of a particular town wished to embark upon a policy of zoning for the purpose of regulating and restricting the construction and use of buildings within a fixed area is a legislative matter subject to referendum. However, since the policy to have zoning was already determined and the changing of such areas was committed to the planning commission and the city council, such action was found to be administrative and not referable.

In 2002, the issue of administrative power and legislative acts was again addressed by the Nevada Supreme Court. As the Court aptly explained in Citizens for Public Train Trench Vote v. City of Reno, 53 P.3d 387, 391 (Nev. 2002) (emphasis added):

Initiative is the power of the people to propose and enact new laws. The power is contained within Article 19, Section 2(1) of the Nevada Constitution: "[T]he people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls." According to the Nevada Constitution, the initiative powers provided in Article 19 "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." *The initiative power applies only to legislation, however; it does not extend to administrative acts.*

Here, the administrative functions as pertaining to redevelopment are relegated to the City Council under state law. Further, the power to appropriate funds is also an administrative act and not subject to delegation to the voters by the initiative process. As such, the changes proposed by the "Initiative Petition" should be viewed as administrative in nature, not legislative. Therefore, it is the recommendation of the Office of the City Attorney that the Initiative Petition cannot be adopted as law by the City Council is must not be referred to the ballot.

This memo is not intended to raise any legal issues that relate to the legal sufficiency of the referendum and initiative petitions. In fact, if this opinion is challenged in court, the City reserves the right to raise other issues including, but not limited to, whether or not the initiative petition meets the single subject matter test as proscribed by law (this office believes it does not), and whether or not the initiative petition impairs any existing development agreements that have been approved by the City Council (this office believes that existing development agreements may be impaired by passage of the initiative petition). If you require more information regarding these legal issues, this office will be happy to provide advice.

BRJ/cg

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1995 Nev. Op. Atty. Gen. 69, 1995 Nev. Op. Atty. Gen. No. 16, 1995 WL 548668 (Nev.A.G.)

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1995 Nev. Op. Atty. Gen. 69, 1995 Nev. Op. Atty. Gen. No. 16, 1995 WL 548668 (Nev.A.G.)

Office of the Attorney General
State of Nevada

Opinion No. 95-16

August 14, 1995

REDEVELOPMENT AGENCIES; REFERENDUM:

City voters may not use a referendum petition to repeal the ordinance wherein the city council approved the redevelopment plan. Such an attempt would violate the Constitution of the United States and of the State of Nevada.

The Honorable Bradford R. Jerbic
City Attorney

Dear Mr. Jerbic:

You have posed a question regarding the functioning of the City of Las Vegas Downtown Redevelopment Agency (Redevelopment Agency).

QUESTION

May the qualified voters of the City of Las Vegas use a referendum petition to repeal a 1986 ordinance wherein the city council approved the redevelopment plan to be used by the city's Redevelopment Agency?

ANALYSIS

In your opinion request you conclude that the voter's attempt to use a referendum petition to repeal the redevelopment plan would impair existing contracts between the Redevelopment Agency and its bondholders and would therefore violate Article 1, Section 10 of the United States Constitution. We agree with your conclusion that the voter's power of referendum is unavailable in this matter. We conclude that the city's adoption of the redevelopment plan was administrative, not legislative, in nature and therefore cannot be the subject of a referendum petition under Article 19, Section 4 of the Nevada State Constitution. We also agree that the ballot measure would plainly and palpably violate the United States Constitution based upon the analysis you provided on the subject of impairment of contracts.

The subject of urban renewal and redevelopment of blighted areas within municipal-

ities is a matter of statewide concern. In order to address this problem, the legislature enacted a comprehensive set of laws contained within NRS chapter 279 to apply uniformly to all municipalities.

NRS chapter 279 provides a statutory scheme whereby blighted and underutilized areas may be eliminated in order to promote the public health, safety, morals and welfare. Elimination of these blighted and underutilized areas by acquisition, clearance and disposition, or reclamation and rehabilitation has been declared by the legislature to be within the public interest. See NRS 279.230; NRS 279.416; NRS 279.418; *Urban Renewal v. Iacometti*, 79 Nev. 113, 379 P.2d 466 (1963).

Pursuant to statutory procedure, the city council declared a need for the creation of the Redevelopment Agency to function within its community. The Redevelopment Agency thereafter developed a redevelopment plan. On March 5, 1986, the city council adopted the redevelopment plan and set forth the legal description of the boundaries of the area to be redeveloped. See NRS 279.586. The approved redevelopment plan included a mechanism whereby a portion of the tax-increment collected on the taxable property located within the redevelopment area could be used to finance redevelopment projects. The Redevelopment Agency thereafter issued bonds to fund redevelopment projects and pledged the revenues from the tax-increment financing in order to create a major portion of the repayment funds needed to retire the debt on said bonds.

Early in 1995, a group of qualified voters in the city circulated a referendum petition. The purpose of the petition was to force a reconsideration and repeal of the city's 1986 ordinance adopting the redevelopment plan for the downtown area. On July 5, 1995, the city clerk informed the city council that the referendum petition contained sufficient signatures of qualified voters to cause an election on the matter.

For the reasons set forth below, we conclude that referendum cannot be used by the voters to undo the redevelopment plan.

Initiative is that power reserved to the people to propose new laws. Referendum gives the people the power to veto those laws passed by their representatives. The initiative and referendum powers extend to the registered voters of each municipality as to all local, special and municipal legislation of every kind. Nev. Const. art. 19, § 4.

It is a basic principle, however, that these broad based powers only apply to "legislation" and that administrative acts are excepted from initiative and referendum under the state constitution.

In the case of *Forman v. Eagle Thrifty Drugs and Markets*, 89 Nev. 533, 516 P.2d 1234 (1973), the Nevada Supreme Court held that changing a zoning classification by city ordinance was not subject to initiative or referendum. While declaring that zoning was a matter of statewide concern, the court concluded:

We think that whether or not the citizens of a state wish to embark upon a policy of zoning for the purpose of regulating and restricting the construction and use of buildings within fixed areas is a legislative matter subject to referendum. But when, as in the present case, such policy has been determined and the changing of such areas, or the granting of exceptions has been committed to the planning commission and the city council in order to secure uniformity necessary to the accomplishment of the purposes of the comprehensive zoning ordinance, such action is administrative and not referable.

Id. at 537-38.

We believe that the court would use an identical analysis when reviewing the present city ordinance implementing the state redevelopment laws. As previously noted, the redevelopment of blighted areas is a matter of state policy and state concern. NRS 279.230; NRS 279.416; NRS 279.418. By statute, the legislature has created the Redevelopment Agency in Las Vegas, as well as other urban renewal agencies in each municipality, to administer the laws within the statutory guidelines. See NRS 279.370; NRS 279.426; *City of Sparks v. Best*, 96 Nev. 134, 605 P.2d 638 (1980). Once the need for the Redevelopment Agency to function was determined, all subsequent acts by the city council and the agency in implementing the redevelopment plan involved executive and administrative functions. Thus the present attempt to nullify the redevelopment plan by way of referendum is prohibited. See *Gibbs v. City of Napa*, 130 Cal. Rptr. 382 (Cal. App. 1976).

We further agree, as set forth in your analysis, that if the voters could repeal Ordinance No. 3218 by way of referendum, important security provisions for the existing bondholders would be eliminated and would unconstitutionally impair the state's contracts with said bondholders. See *United States Trust Company of New York, Trustee, v. New Jersey*, 431 U.S. 1 (1977).

CONCLUSION

Referendum simply may not be used to undo the redevelopment plan in this case because the city council's adoption of the plan was administrative and not legislative in nature. Additionally any attempt to place the repeal of the redevelopment plan on the ballot would plainly violate Article 1, Section 10 of the United States Constitution.

Cordially,
Frankie Sue Del Papa
Attorney General

By: Robert L. Auer
Deputy Attorney General
Boards & Commissions

1995 Nev. Op. Atty. Gen. 69, 1995 Nev. Op. Atty. Gen. No. 16, 1995 WL 548668
(Nev.A.G.)

1995 Nev. Op. Atty. Gen. 69, 1995 Nev. Op. Atty. Gen. No. 16, 1995 WL
548668 (Nev.A.G.)

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END OF DOCUMENT

CITY COUNCIL

MEETING OF

AUGUST 16, 1995

AGENDA DOCUMENTATION

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TO:
City Council

FROM: Bradford R. Jerbic
City Attorney

SUBJECT: Discussion and possible action regarding consideration and ballot placement of May 30, 1995 Initiative and Referendum Petitions

PURPOSE/BACKGROUND

On July 5, 1995, the Las Vegas City Council was apprised by the City Clerk that she had received an initiative petition and a referendum petition, both dated May 30, 1995, which had been examined and were certified as containing sufficient signatures to certify the petitions as sufficient. Under Nevada law, if the City Council fails to adopt the changes proposed in the initiative petition, or fails to repeal the referred ordinance in a referendum petition within specified time periods, the petitions shall be submitted to the voters.

It is also clear under Nevada law that the office of the City Attorney should examine the legality of the requests contained in the initiative and referendum petitions to determine whether the proposed language would be illegal or invalid if adopted. Further, certification of signatures by the City Clerk does not constitute a certification as to the legality of any law in a proposed initiative or referendum petition.

The Las Vegas City Council has no duty or obligation under law to submit to the people for their enactment an initiative or referendum which is contrary to law. (AGO 79-3, *see also*, State ex rel. Davies v. Reno, 37 Nev. 334, 136 P. 110 (1913), Caine v. Robbins, 61 Nev. 416, 131 P.2d 516 (1942)). Therefore, under this analysis, it becomes necessary to resolve whether or not the proposed initiative petition and referendum petition contain language which would be valid if enacted.

INITIATIVE PETITION

The "Initiative Petition" submitted to the City proposes the following language:

- The People of the City of Las Vegas do enact as follows:
That the registered voters of the City of Las Vegas, Nevada are thereby deemed to be the "legislative body" within the meaning of the Nevada Revised Statutes Sections 279.586, 279.587 and 279.604, to the exclusion of the City Council of Las Vegas and all other legislative bodies, so that any and all redevelopment plans and contracts must be approved by the registered voters of the City of Las Vegas.¹

¹ NRS 279.586 relates to determinations that must first be made by the legislative body before an ordinance can be adopted which designates the redevelopment area and the purpose and intent of the legislative body for that area. NRS 279.604 allows the legislative body to require the redevelopment agency to submit contracts to the legislative body for approval. NRS 279.587 does not exist.

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AUG 16 1995

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The term "Legislative Body" is defined in NRS 279.396 as:

. . . the city council, board of county commissioners or other legislative body of a community.

Given the specific statutory definition above, the question becomes whether the "registered voters of the City of Las Vegas" may be a "legislative body" under NRS 279.396. If the answer is "no", then the submitted "Initiative Petition" is in conflict with State law and the Initiative should not be submitted for inclusion on the ballot.

This office has not been able to locate any case which specifically addresses this issue, however, analysis of this question leads to the conclusion that the legislature did not intend the term legislative body to include all of the registered voters of a particular municipality. The list of "legislative bodies" contained in NRS 279.396 refers to established legislative bodies which clearly have legislative power. (The only legislative power granted to the voters of a municipality is through the initiative and referendum.) To interpret the term "legislative body" as meaning the voters of the city is tantamount to redefining a term which has established meaning given by the legislature. Such action may only be accomplished by an act of the state legislature.

Further, the Nevada Supreme Court has determined that the powers of the electorate to propose initiatives and referendums is limited to legislative acts, not acts which by their nature are administrative. Nevada has adopted the following test for drawing the distinction between an administrative and a legislative ordinance:

An ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character and referable, but an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is administrative or executive in character, and not referable. Foreman v. Eagle Thrifty Drugs and Markets, 89 Nev. 533, 537 (1973) citing Denman v. Quinn, 116 S.W.2d 783, 786 (Tex.Civ.App. 1938).

In Foreman, the Court looked at whether an initiative and referendum which sought to amend the City of Reno's zoning code to prohibit industrial or commercial use of land within 300 feet of a junior high or elementary school. In analyzing whether the proposed initiative and referendum was legislative or administrative, the court applied the Denman test. The court reasoned that whether the citizens of a particular town wished to embark upon a policy of zoning for the purpose of regulating and restricting the construction and use of buildings within a fixed area is a legislative matter subject to referendum. However, since the policy to have zoning was already determined and the changing of such areas was committed to the planning commission and the city council, such action was found to be administrative and not referable.

Here, the administrative functions as pertaining to redevelopment are relegated to the City Council under state law. As such, the changes proposed by the "Initiative Petition" should be

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viewed as administrative in nature, not legislative. Therefore, it is the recommendation of the Office of the City Attorney that the Initiative Petition cannot be adopted as law by the City Council is must not be referred to the ballot.

REFERENDUM PETITION

You have inquired concerning the validity of the referendum petition which seeks reconsideration of Ordinance No. 3218, adopting the redevelopment plan for Las Vegas. You have determined that the petition is sufficient with respect to the number of signatures, but you seek guidance concerning the substantive validity of the proposal.

It is clear that, if the City Council were to repeal Ordinance No. 3218, there would not be sufficient funds to repay the approximately \$55 million in bonds that have been issued for existing redevelopment projects. Nor would there even be a redevelopment agency to meet the repayment obligations.

Under well-established case law, legislation that affects the ability of government to perform a covenant to repay bonds represents an unconstitutional impairment of contractual obligations under the Federal Constitution. See United States Trust Company of New York v. New Jersey, 431 U.S. 1, 97 S.Ct 1505 (1977). Voter-approved legislation that has such effect is similarly invalid under either state or federal constitutional provisions that protect of the obligations of contract. Continental Illinois National Bank and Trust Company of Chicago v. State of Washington, 696 F.2d 692 (9th Cir. 1992); Ruano v. Spellman, 505 P.2d 447 (Wash. 1973).

In this instance, the obligations of the Redevelopment Agency to bondholders clearly would be impaired if the City Council were to repeal Ordinance No. 3218 or if the voters were to "reject" the ordinance by means of a vote under the referendum. This issue has been analyzed by the City's bond counsel, Sweinseid and Stern, who have concluded that the referendum petition is not referable as it represents an unconstitutional impairment of contractual obligations.

Therefore, it is the recommendation of the Office of the City Attorney that Referendum Petition cannot be adopted by the City Council for the reasons stated herein and must not be referred on the ballot.

FISCAL IMPACT

Undetermined

RECOMMENDATIONS

It is the recommendation of the office of the City Attorney that the Council vote to not adopt the legal changes proposed in the Initiative and Referendum Petitions and vote to direct the City Clerk to not place the Initiative and Referendum Petitions on any ballot.

CITY COUNCIL MINUTES

AUG 16 1995

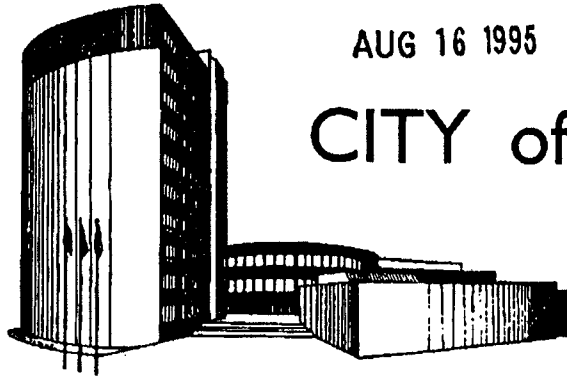
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CITY of LAS VEGAS

MAYOR
JAN LAVERTY JONES

COUNCILMEN
ARNIE ADAMSEN
MATTHEW Q. CALLISTER
MICHAEL J. MCDONALD
GARY REESE

CITY MANAGER
LARRY K. BARTON



August 10, 1995

Petitioners' Committee

Ms. Courtney Alexander, 205 Coleen Drive, Las Vegas, Nevada 89107

Ms. Barbara Maher, 4005 Snead Drive, Las Vegas, Nevada 89107

Mr. Jimmy Sanders, 1313 W. Monroe, Las Vegas, Nevada 89106

Mr. Sam Savalli, 410 Falcon, Las Vegas, Nevada 89107

Ms. Wanda Henry, 2808 Willoughby Drive, Las Vegas, Nevada 89101


Re: Agenda Item - Initiative and Referendum

Please be aware that the City Attorney has placed this matter on the City Council Agenda for their meeting to be held on Wednesday, August 16, 1995, in the Council Chambers at City Hall.

This matter is item #56 and it will be considered during the morning session of the Council meeting which begins at 9:00 A.M.

A copy of the Agenda for this meeting is attached.

Sincerely yours,


Kathleen M. Tighe, CMC
City Clerk

cc: Ms. Theresa McGuire, 1630 S. Commerce Street, Las Vegas, NV 89102



**CITY COUNCIL MINUTES
MEETING OF
AUGUST 16, 1995**

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**VERBATIM TRANSCRIPT - ITEM 56: DISCUSSION AND POSSIBLE ACTION
REGARDING CONSIDERATION AND BALLOT PLACEMENT OF MAY 30, 1995
INITIATIVE AND REFERENDUM PETITIONS**

MAYOR JONES

Item 56 is the discussion and possible action regarding consideration and ballot placement of May 30, 1995, Initiative and Referendum Petitions.

CITY ATTORNEY JERBIC

Thank you, Mayor. The -- As the City Council's aware, due to a previous report by the Las Vegas City Clerk, the Council was presented with an Initiative and Referendum Petition earlier this year which was sufficient in number of signatures for purposes of being placed on the ballot. However, the analysis doesn't stop there and it's been referred to my office for review. I in turn have referred both the Initiative Petition and Referendum Petitions to other parties, including our bond counsel and the Attorney General's Office.

The -- As you will note from the back-up material that I provided the Council, it's the opinion of my office that the Initiative Petition, which seeks to make the citizens of the City of Las Vegas the Board for purposes of acting upon contracts and the like for the Redevelopment Agency, is not a legal petition.

The reasons are twofold: One, legislative body has a definition in the Legislative Law. That's State Law. It's well established that you cannot amend State Law with local ordinances. State Law is always superior to local ordinances, so if somebody wants to make a change in the definition of what legislative body is, they'll need to do it by changing the State Law, not by changing a local ordinance. For that reason, this would not be legal, because you can't change the law with a local ordinance.

Second, the types of things that the legislative body does are administrative, not legislative. It is also well established that any referendum or initiative petition that is administrative in nature is not referable to the public and is not to be put on the ballot. For those two reasons, the Initiative Petition in our opinion fails.

The other Petition that was received is a Referendum Petition, which seeks in effect to dissolve the ordinance creating the City of Las Vegas Downtown Redevelopment Agency. That particular Referendum Petition has been referred by my office to our Bond Counsel, Swendseid and Stern, which have written an opinion wherein they concluded that such a petition would violate the United

CITY COUNCIL MINUTES
MEETING OF
AUGUST 16, 1995

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VERBATIM TRANSCRIPT - ITEM 56: DISCUSSION AND POSSIBLE ACTION
REGARDING CONSIDERATION AND BALLOT PLACEMENT OF MAY 30, 1995
INITIATIVE AND REFERENDUM PETITIONS

States Constitution prohibition against impairment of contracts.

I have also referred the Referendum to the Attorney General's Office to see if they had an opinion and would comment on it. I received a draft and an opinion from the Attorney General's Office yesterday, concluding that one, it is administrative in nature and therefore not referable and it should not be placed on the ballot. And second, that it is -- Also, they agreed with our Bond Counsel, Swendseid and Stern, that it is -- would represent an impairment against our contractual obligations to pay our bonds.

For both of those reasons, I believe that both the Initiative Petition and the Referendum Petition should not be adopted as law by the Las Vegas City Council and further, the Council should take a vote today stating that one, you will not adopt it as the law of the City, and second, that you will in your motion order the City Clerk to not place either of these items on the ballot for the reasons that I've just stated.

COUNCILMAN ADAMSEN

Those are your recommendations, Mr. Jerbic?

CITY ATTORNEY JERBIC

They are, Councilman.

COUNCILMAN ADAMSEN

Unless there's questions or comments, Your Honor, I'd move to follow the recommendation of the City Attorney.

MAYOR JONES

Vote on the motion. Post. Motion's approved. (Motion carried unanimously with CALLISTER excused.)

(*** END OF DISCUSSION ***)

/gpb

CITY COUNCIL

MEETING OF

AUGUST 16, 1995

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City of Las Vegas

AGENDA & MINUTES

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COUNCIL CHAMBERS • 400 EAST STEWART AVENUE

ITEM

ACTION

Item
Number

DISCUSSION / ACTION ITEMS

CITY ATTORNEY - CONTINUED

Second, the types of things that the legislative body does are administrative, not legislative. It is also well established that any referendum or initiative petition that is administrative in nature is not referable to the public and is not to be put on the ballot. For those two reasons, the Initiative Petition in our opinion fails.

The other Petition that was received is a Referendum Petition, which seeks in effect to dissolve the ordinance creating the City of Las Vegas Downtown Redevelopment Agency. That particular Referendum Petition has been referred by my office to our Bond Counsel, Swendseid and Stern, which have written an opinion wherein they concluded that such a petition would violate the United States Constitution prohibition against impairment of contracts.

I have also referred the Referendum to the Attorney General's Office to see if they had an opinion and would comment on it. I received a draft and an opinion from the Attorney General's Office yesterday, concluding that one, it is administrative in nature and therefore not referable and it should not be placed on the ballot. And second, that it is -- Also, they agreed with our Bond Counsel, Swendseid and Stern, that it is -- would represent an impairment against our contractual obligations to pay our bonds.

For both of those reasons, I believe that both the Initiative Petition and the Referendum Petition should not be adopted as law by the Las Vegas City Council and further, the Council should take a vote today stating that one, you will not adopt it as the law of the City, and second, that you will in your motion order the City Clerk to not place either of these items on the ballot for the reasons that I've just stated.

COUNCILMAN ADAMSEN: Those are your recommendations, Mr. Jerbic?

CITY ATTORNEY JERBIC: They are, Councilman.

COUNCILMAN ADAMSEN: Unless there's questions or comments, Your Honor, I'd move to follow the recommendation of the City Attorney.

MAYOR JONES: Vote on the motion. Post. Motion's approved. (Motion carried unanimously with CALLISTER excused.)

(9:52 - 9:55)

Submitted at City Council

Date *3/4/09* Item *14.55*
56,70