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June 2, 2003

Assemblyman Lynn Hettrick  
Assembly Chambers

Dear Mr. Hettrick:

You have asked whether the Nevada Constitution prohibits the Nevada Legislature from enacting an appropriation for which sufficient tax revenue has not been provided. To answer your question, we will consider a fundamental principle of constitutional construction and review the applicable provision of the Nevada Constitution.

A fundamental principle of statutory construction states that "[w]here the language of a statute is plain and unambiguous, and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself." State v. Jepsen, 46 Nev. 193, 196 (1922); Del Papa v. Board of Regents, 114 Nev. 388, 392 (1998); Madera v. State Indus. Ins. Sys., 114 Nev. 253, 257 (1998); Erwin v. State, 111 Nev. 1535, 1538-39 (1995). This principle also applies in interpreting the provisions of the Nevada Constitution. State ex rel. Wright v. Dovey, 19 Nev. 396, 399 (1885) (stating that the rules of statutory construction apply equally to statutes and the Constitution).

Subsection 1 of section 2 of article 9 of the Nevada Constitution states:

1. The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years.

As discussed previously, in interpreting subsection 1 of section 2 of article 9 of the Nevada Constitution, we must apply the plain meaning of the words used in that constitutional provision. The plain language of this provision requires the Legislature to "provide by law for an annual tax sufficient to defray the estimated expenses of the state

for each fiscal year." Furthermore, this provision requires that "whenever the expenses of any year exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing year or two years." Thus, the plain language of this provision would forbid the Legislature from enacting an appropriation in the absence of sufficient tax revenue. Therefore, based upon the plain language of subsection 1 of section 2 of article 9 of the Nevada Constitution, it is the opinion of this office that the Nevada Constitution prohibits the Nevada Legislature from enacting an appropriation for which sufficient tax revenue has not been provided.

However, we would note that this provision does not prohibit the Legislature from considering or enacting an appropriations act before considering or enacting other legislation that provides sufficient tax revenue. Rather, the constitutional provision requires only that the Legislature provide for sufficient tax revenue for the appropriations made. This could be accomplished by enacting the legislation providing sufficient tax revenue after having enacted an appropriations act, so long as the legislation providing sufficient tax revenue is enacted by the Legislature during the legislative session.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,



Brenda J. Erdoes  
Legislative Counsel