



Nevada Association of Counties
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NEVADA ASSOCIATION OF COUNTIES
Report on the Implementation of SB29, Functional Home Rule for Counties
Required Pursuant to SB29 passed in the 2015 Legislative Session

Submitted to the Legislative Counsel Bureau on February 2, 2017

Introduction

During the 2015 session of the Nevada Legislature, Senate Bill 29 became law. SB29 grants counties limited *functional* home rule, that is, a limited form of the authority to pass ordinances and act upon matters of local concern that are *not* otherwise governed by state or federal laws. Local governments in Nevada sought additional home rule authority so that administrative matters of local concern that are not expressly authorized in state law, matters that are often minor or jurisdictionally specific, can be addressed at the local level without seeking legislation. SB29 clearly limits this new grant of county authority by making it clear that it does not include additional powers in certain areas and that State and federal laws always take precedence.

Since this legislation was signed into law in June of 2015 the Nevada Association of Counties (NACO) has worked with every county in the State to monitor implementation of SB29 as well as to provide information and training on the intent of the legislation and how it may be used. In July of 2015 NACO held a training workshop for counties on the new law which included a presentation from Kevin Powers of LCB. Following the workshop NACO produced a white paper on home rule that was distributed to all counties. The white paper was intended to be used as guidance for counties wishing to utilize functional home rule and is attached to this document for reference.

Based on the information that NACO has received from each of its member counties, there have been only three counties so far who have used the new functional home rule authority. A summary of those home rule actions follow and links to each of the ordinances and resolutions can be found at:

<http://www.nvnaco.org/resources/education-workshops/>

Carson City

The ordinance concerns notification requirements for certain zoning and land use actions in Carson City. Prior to adoption of the ordinance, the Carson City Municipal Code ("CCMC") reflected identical notification requirements as those established in



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NRS 278.260 and NRS 278.315. In general, the requirement was that property owners within a 300-foot radius of the property applying for the zoning action had to be sent written notification of the application. Prior to the passage of SB 29, NRS 278.260 and NRS 278.315 had been interpreted by the Carson City District Attorney's office to preclude modification of the 300-foot notification radius by political subdivisions.

After the passage of SB 29, Carson City revisited the question and determined that Carson City now had the authority to expand the requirements of NRS to allow for more notification in regards to zoning actions. SB 29 expressly identifies "planning, zoning, development and redevelopment in the county" as a "matter of local concern" over which the Board of Supervisors has authority subject to State and Federal limitations, SB 29 §§ 2.7(2), 7. Based on this interpretation the Board of Supervisors adopted ordinance numbered 2016-11 which (1) expanded the notification radius from 300 feet to 600 feet when the application property is between one and 40 acres; and (2) expanded the notification radius from 300 feet to 900 feet when the application property is 40 acres or larger.

Clark County

Clark County has used its authority under NRS 244.137 et sec. (SB29 of 2015), addressing matters of local concern, three times since enactment. The subjects addressed concerned graffiti, civil infractions for sidewalk violations, and annexations.

Through ordinance numbered ORD-4385-16, Clark County enacted a bill to address graffiti abatement. The large urban population in Clark County, together with its large gang population, makes the need for rapid graffiti abatement necessary to prevent blight. NRS 244.36935 and NRS 244.3694 provided for a binary system, between residential and non-residential properties, generally allowing county government to pay for the former, but not the latter, with both affording delays. The bill added a third expedited process for the portion of properties in open areas adjacent to public streets, which are most easily accessed by graffiti vandals, as well as abatement officers.

Through ordinance numbered ORD-4384-16, Clark County enacted a law enforcement process for civil infractions related to public sidewalks, particularly for matters such as obstructive uses and sales. This is a matter of very substantial concern for public safety upon the Las Vegas Strip. The Ordinance affords the perpetrator with the election to choose a criminal or civil proceeding, with the latter



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to take place immediately and which typically terminates with a voluntary surrender of goods offered for sale.

Through an ordinance numbered ORD-0482-16 by the Clark County Clerk, and 4411 by Clark County Comprehensive Planning, an ordinance was enacted to address the city annexation process, which forced certain inhabitants in the Lone Mountain area into agreeing to annexation in order to obtain sewer services. The bill recited the home rule authority of SB 29, as well as the circumstances leading up to and justifying necessary action relating to timing of annexation and implementation of the Lone Mountain Land Use Plan. The ordinance, after enactment, was eventually repealed after negotiations with the City of Las Vegas resulted in an interlocal agreement that resolved the issues addressed by the bill.

Storey County

The Resolution authorizes a portion of the funds appropriated to Intermountain Slurry, a private contractor, contracted by the County to perform cape-sealing of roadways throughout the County to be used for cape-sealing of certain roadways in the Virginia City Highlands. The reason it was believed necessary to provide a resolution for this purpose is that the roads in the Virginia City Highlands, while largely open to the public, are privately owned and not dedicated to the County. There are limitations on the use of county equipment on privately owned roadways set out in NRS 244.273 and NRS 244.2731. There is no similar express restriction on using a private contractor to improve a privately-owned roadway where the improvement performed is part of a county-wide street improvement program. The resolution sets forth the justification for the action. Approval of the resolution required that it be placed on an agenda in accordance with the Open-Meeting law. This provided public notice and transparency as to the proposed action and its justification. Again, in the absence of express authority, it is presumed that the Board has the authority to take the action it took when addressing a matter of local concern. NRS 244.164(1)(c). Improvement of a widely utilized roadway within the County, even where privately owned, would be a matter of local concern.

Local governments are routinely authorized to exercise their authority through the adoption of resolutions, contracts and by other means. See e.g., NRS 244.1505(3). NRS 244.146(2) states that if there is no specific statutory or constitutional provision requiring county authority to be exercised in a specific manner, the county may adopt an ordinance prescribing a specific manner for exercising the power. The statute does not require that an ordinance be adopted in order for a county to exercise its authority over matters of local concern. Further,



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under NRS 244.146(1)(c) if there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern... it must be presumed that the board has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature. It is the opinion of the Storey County District Attorney that this latter provision supports the exercise of authority over matters of local concern through a resolution, especially where it addresses a one-time issue rather than a recurring issue.

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NACO Home Rule Roundtable, July 2015

On July 24, 2015, the Nevada Association of Counties (NACO) held a Home Rule Roundtable, which was attended by representatives from most of Nevada's 17 counties as well as Legislative Counsel Bureau (LCB) staff and NACO staff. The purpose of the Roundtable was to have a conversation amongst all counties about the implementation of SB29. County representatives at the meeting included commissioners, staff, and district attorneys. The Roundtable consisted of a presentation from LCB on the content of SB29, followed by a discussion of what was included in the new authority granted to counties and how it should be used. The following is a summary of the outcomes of that discussion.

Guidance on the Implementation of SB29

Does Nevada now have "home rule?"

SB29 does not make Nevada purely a "home rule state," because in Nevada, Dillon's Rule* still applies; however some limited home rule authority was granted to counties through the bill. Since the Nevada Legislature effectively grants local government all of their power, what SB29 does is grant counties additional administrative powers through Nevada state law. The Legislature did this because it acknowledged in Section 2(5) of the bill that "a strict interpretation and application of Dillon's Rule unnecessarily restricts a board of county commissioners from taking appropriate actions ... to address matters of local concern for the effective operation of county government and thereby impedes the board from responding to and serving the needs of local citizens diligently, decisively and effectively."

* Dillon's Rule is a legal tenant (based on a decision made by Judge Forrest Dillon from Iowa) that local governments only have powers that are expressly granted to them by either the federal government or state law. Dillon's Rule was what was in place in Nevada prior to the passage of SB29. Dillon's Rule is and overall remains in place in Nevada except regarding "matters of local concern" as granted through SB29.

What Type of Limited “Home Rule” was Granted to Counties Through SB29?

The form of administrative home rule granted to counties through SB29 is articulated in Section 7(1)(c) of the bill and will now be reflected in Chapter 244 of Nevada Revised Statutes. The language expressly grants county commissions all powers necessary or proper to address “matters of local concern.” This basically means that, with some very defined limitations, if State or Federal law is silent on a matter of local concern, then counties have the authority to address that issue as they think best suits the needs of their constituents. In addition, their authority to do so is upheld by the following language: “If there is any fair or reasonable doubt concerning the existence of a power of the board to address a matter of local concern ... it must be presumed that the board has the power unless the presumption is rebutted by evidence of a contrary intent by the Legislature.” Previous to the passage of SB29, if State law did not articulate how a local jurisdiction could address an issue, then the jurisdiction lacked authority to do so.

What is a “Matter of Local Concern”?

The phrase “matters of local concern” is key to SB 29. It is defined in Section 2.7 of the bill so that the new power granted to counties clearly includes any matter that:

- 1) Primarily affects or impacts areas located in the county, and people who reside, work, visit or are otherwise present in areas located in the county but does not have a significant effect or impact on areas located in other counties ; and
- 2) Is not within the exclusive jurisdiction of another governmental entity.

To assist in interpreting the phrase “matters of local concern,” the bill includes a list of examples of *matters of local concern* (this list is not exhaustive):

- (a) Public health, safety and welfare in the county
- (b) Planning, zoning, development and redevelopment in the county
- (c) Nuisances and graffiti in the county
- (d) Outdoor assemblies in the county
- (e) Contracts and purchasing by county government
- (f) Operation, management and control of county jails and prisoners by county government
- (g) Any public property, buildings, lands, utilities and other public works owned, leased, operated, managed or controlled by county government...

“Matters of local concern” and thus new county authority does not include:

- 1) A state interest that requires statewide uniformity of regulation;
- 2) The regulation of business activities that are subject to substantial regulation by a federal or state agency; or
- 3) Any other federal or state interest that is regulated by the Constitution, statutes or regulations of the U.S. or this State, or federal or state regulation that preempts local regulation.

Limitations Placed on the New Powers Granted to Counties Through SB29

Though SB29 does give counties additional home rule powers, the new law puts parameters around this new authority in the following ways:

1) Existing State and Federal regulation will always trump local ordinance – if there is a State or federal law that addresses a certain issue, that law will always take precedence
2) SB29 did not grant counties additional authority over the following areas: the ability to condition or limit a county’s civil liability; the civil liability between private citizens; imposition of duties on another governmental entity; imposition of taxes without express authority; conduction of elections without express authority; imposition of a service charge or user fee; and regulation of business activities substantially regulated federally or by the State.

Procedural Issues

During the Roundtable, there was discussion regarding procedure, i.e., if no constitutional/statutory procedure is in place for the board to follow to exercise a power, the board will now have the power to develop and adopt procedures to exercise law.

Do New Powers Grant Additional Jurisdiction for Counties?

The language in the bill was written to clarify that SB29 does not grant counties additional powers over statutorily established entities within their boundaries, such as cities or GIDs. However, any new authority that counties have does extend to county property or entities fully governed by counties that may be located or operate within the geographic jurisdiction of others.

Do Counties Have to Supply Documentation and Supporting Materials on Ordinances Passed that May be an Exercise of Their New Home Rule Authority?

This issue was discussed during the Home Rule Roundtable, and, though there is not specific guidance on this in statute, most agreed that it would be helpful to provide documentation along with any new ordinances passed pointing to SB29 or the Nevada Revised Statute (NRS) that grants a county the authority to pass an ordinance that is an exercise of home rule.

Reporting

Pursuant to Section 7.7 of SB29 NACO is responsible for reporting to the Legislature on the use of SB29 by counties. The participants in the Roundtable agreed to share with NACO any new ordinances that they developed that were an exercise of this authority. At the request of the participants, NACO also agreed to keep track of any “home rule” ordinances and create an accessible resource that all counties can use to see any ordinances adopted and their format. NACO will send a request to each county contact quarterly to request information on any new county actions that are an exercise of home rule.

Please remember to contact NACO and share all information with them on the use of the new authority granted in SB29.

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