

COMMITTEE ON FEDERAL, STATE AND LOCAL GOVERNMENTS

Minutes of Meeting -- February 3, 1969

Senate Committee on Federal, State and Local Governments
 Assembly Committee on Government Affairs

A joint hearing of the Senate Committee on Federal, State and Local Governments and the Assembly Committee on Government Affairs was held on February 3, 1969 at 3:00 P.M. Under consideration were fiscal problems of North Las Vegas, including the bonding situation.

Those in attendance were:

James I. Gibson, Chairman)	
Carl F. Dodge)	
Vernon E. Bunker)	Senate Committee on Federal, State
Marvin L. White)	and Local Governments
Chic Hecht)	
Warren L. Monroe)	
Francis W. Farr)	
Hal Smith, Chairman)	
Norman Hilbrecht)	
David Branch)	Assembly Committee on Government
Don Mello)	Affairs
C. W. Lingenfelter)	
Bryan Hafen)	
Virgil Getto)	

Also present were:

Clay Lynch	City Manager, North Las Vegas
Frank Daykin	Legislative Counsel Bureau

Chairman Gibson called the meeting to order and stated that the meeting was to bring the Committees up-to-date on various points which they had asked Mr. Daykin to check out -- questions that had come up as a result of earlier meetings. He said that he was hopeful that this would indicate the direction the Committees should take in these matters.

Chairman Gibson: One of the questions that came up, as a part of the background, was the basis for the improvement district in the beginning as far as value. This question arose as to whether or not the Retirement Board had violated their governing regulations on this type of bond purchase -- in that the value of the property might not have been sufficient to justify their purchasing \$2,250,000.00 worth of bonds (or whatever the exact figure was.)

Mr. Daykin: The answer to that is that the test of the city issuing the bonds is the market value of the lands constituting the assessment

district and not the assessed valuation for taxation. The market value of the tract comprising the Nellis Assessment District was shown by the appraisal which Mr. Lynch introduced the other day as an exhibit. This shows at about twice the amount of the assessments to be levied and that is sufficient. It is very liberally sufficient under the charter and it is sufficient under any other applicable statute.

Chairman Gibson: I think that the Retirement Board provision is that the value of the improved property against which the obligation is made should be at least 50% greater.

Mr. Daykin: Yes, and this meets the 50% requirement, as well as meeting the more liberal 100% requirement for issuing the bonds.

Chairman Gibson: A side question to that was the legal status of the assessor's valuation and as I understand it, his present valuation is \$5,500.00 per lot. I think that is what we were told. This would put the total value, on his basis, at \$1,500,000.00. I asked Frank (Mr. Daykin) what was the legal status of the assessor's valuation in this particular exercise of determining the authority of the Retirement Board to purchase such bonds.

Mr. Daykin: The test of the legality of issuance of the bonds is the reasonable market value of the tract assessed, as determined by the governing body of the city. The statute relating to the Public Employees Retirement Act does not put any definition on how market value is to be determined, but it uses the phrase "market value." And I think the only reasonable inference to be drawn is that market value is to be determined for the purposes of the Retirement Board by the same test as it is for the issuance of the bond -- and that is, market value as determined by the governing body. In this case, of course, we have an expressed appraisal made at the instance of the governing body for this particular purpose.

Chairman Gibson: Do you have any comment on this, Clay?

Mr. Lynch: I concur with Mr. Daykin's statement. That is the statute on which we acted when we acted.

Chairman Gibson: The question was raised as to the possibility of requiring the city to use the money now in the trust fund, which was derived from the sale of bonds, for a project not yet undertaken. In this, I am referring to the bonds for the construction of a sewage treatment plant. We understand that there is about \$1,500,000.00 earmarked for that purpose which now is not to be spent until about 1975 -- or when the installation of the facility is justified. As a part of this, I asked Mr. Daykin to research what law he could find on it -- to see whether or not this might be possible. The idea being, that through this device, we might be able to set up a procedure whereby the city could use resources already in hand to correct the delinquency on this bond issue.

Mr. Daykin: Here I am going to have to split some hairs. The ordinances which provide for the issuance of the sewer plant bonds --

both the original ordinance and the subsequent ordinance which provided for the sale of those not at first sold -- each contained a specific pledge not to use the proceeds of that bond issue for any other purpose. There is no State statute which expressly forbids -- nor is there any which authorizes -- the diversion of money under these circumstances. Ordinarily, of course, the city council, having passed the ordinance would be free to depart from it; but, of course, when bonds are sold, the terms of the ordinance become part of the contract between the city and the bond holders. Therefore, any bond holder has a contract right to enjoin or to take some legal action based upon the use of those sewer plant bond proceeds for any other purpose. Now, some of them have been used for inter-fund loans and no bond holder has seen fit to take any action.

Senator Dodge: There's a question in my mind as to whether the bond indenture itself does not prohibit this sort of thing?

Mr. Daykin: The bond indenture itself does not, Senator. I examined this. The bond indenture is much narrower in its terms than the ordinance. Mr. Lynch has supplied me with copies and I am sure they are complete -- both the bond indenture, which I examined and it must be complete -- and the ordinance.

Senator Dodge: Mr. Chairman, I don't think we ought to pursue that further even if it were legally possible. I think this is the wrong direction for us to be heading, as far as any precedence which we establish by virtue of legislative action on the use of capital funds for purposes other than those for which they are sold. It seems to me that conversely from that suggestion that one of the things we have to do is to prevent the cities -- if necessary, extend it to counties -- from using funds which are held in capital accounts for any other purposes than those for which they were sold. I feel that too many situations in which a local subdivision can have conflict of interest in their own thinking and their own actions -- and in defense of things that they have done in the past about the use of that kind of money.

After we had the hearing the other day, somebody used the term (and I don't want anybody to get it on paper, because I don't want to place the City of North Las Vegas in a bad light over the use of this term) -- but it is "financial incest" when you begin to use the capital account funds for the investing in other types of securities in which you may ultimately be on the hook. Now, the great danger of the whole procedure is that everything is fine as long as you have prosperity -- but in this case down there where they have all these assessment districts -- and then you loan money out of this capital fund to one or more of the assessment districts, if you have a financial reverse that affects the repayment ability of those assessment districts, then you have pyramided your problem. You not only have the problem of trying to collect from the assessment district, but you've got the other problem of how you're going to replace the capital funds from which you've borrowed. It's fraught with too much danger and this legislature should in no respect encourage that sort of procedure.

Senator White: I agree, Mr. Chairman, that that is one of the biggest criticisms we have in the procedures used down there now.

And I don't think we ought to encourage that sort of thing any further.

Senator Dodge: I want to say one thing. I am not really critical of what's happened in the past, because as was made clear to me the other day, we do not make this prohibition presently in the law. So I don't infer that there was any illegal action or that there was any malfeasance on the part of anybody. We simply have an area that is silent on this thing -- but what I'm saying is that rather than going in the direction of encouraging the use of capital accounts to do some other job, I think we ought to be going in the other direction and place a prohibition in the law.

Senator Bunker: We're not encouraging it, are we?

Senator Dodge: We were seriously entertaining a piece of legislation that says that the City of North Las Vegas can use the sewer bond fund to get themselves off the hook with the Public Employees Retirement fund.

Senator Gibson: We were looking at that as a possibility. There are some who feel that it is equally wrong to subject the Public Retirement Fund to this kind of a problem -- so I think we have to look at all the alternatives and then we'll rule them out on the basis of merit or lack of merit on that particular approach. In respect to this one approach, a further question that Frank was asked was if permission was obtained from the bond holders who voted the bonds to make this type of a use of them. Would that then correct the stalemate as far as the legality of the situation is concerned. I think his opinion was that that would tend to correct that particular obstacle to this approach. I've asked Mr. Lynch, who hold these bonds -- and apparently, it would be quite difficult to pin down the individual holders of all those bonds, because they are in custody of trusts, departments of banks, et cetera -- and so the city actually doesn't know who the bond holders themselves might be. They pay the interest and principal to secondary holders.

Mr. Daykin: The bonds are not in registered form; therefore, they are bearer bonds. They pass by delivery almost like a dollar bill -- and the city has no way at any time of knowing who the actual holders are. The coupons come into various banks to which they have been presented for collection and that's all the city knows. Am I not correct, Mr. Lynch?

Mr. Lynch: That is correct.

Senator Farr: Mr. Chairman, I appreciate that we are exploring every avenue to find a solution to this problem -- but I don't think we should lose track of the fact that in exploring this that (1) the responsibility of government is to secure (and the law says so) the debt services and then all expenditures thereafter. We must find, in my opinion, a financial method someplace to support that debt service and still operate the city. Mr. Lynch says that he cannot pay -- that there is not enough money for debt service. But we all lose sight of two things. Number one, I think that the trust the employees placed in the Retirement Board was violated in the fact that they had no right to extend a moratorium and that compounded the cost of

interest payments -- and will in the future -- so we've got to find a solution there. Nevertheless, it's done, but to come to the legislature and ask for an extension of that particular moratorium on those bonds -- and the payment and interest, I think is a responsibility that should be vested back with the people in the government to find that revenue or come up with an answer to somehow find that revenue -- because, if I'm correct, the law says that indebtedness must be the first priority in city government -- and maybe I don't put it in the proper legal terms, because I don't understand a lot of them often -- and then operational expenses thereafter.

I asked this question the other day -- why that was not done in preparing the future budget and I never did get a clear concise answer -- except to say that we would have to cut back services and this is not unusual in lots of government. We cut services or at least we put a freeze in certain areas of expenditures to take care of that debt service. I would like to ask that question again -- what can be done in the area of support, if someone has a program here that we can finance their operations -- but is it not true that the priority should be based on the bonds themselves and the debt to the city and then, thereafter, money spent for operation?

Mr. Lynch: The answer to your question is that if we had to levy a property tax levy for the support of this Nellis Industrial Park it would have wiped out approximately \$366,000.00 worth of public safety in the operations of the city -- which is at a bare minimum of public safety at the present time -- and it would further have overlapped in the tax rate of the operations of Clark County -- conceivably as much as \$5,000,000.00 in operating money of the County.

Senator Farr: You say \$366,000.00 of public safety. You're including in there police, fire and public works operations -- such as sewers, people who work in the streets, et cetera -- so you're covering the whole spectrum.

Senator Gibson: This would wipe out their entire city tax rate, plus an additional \$.50 or \$.60 in the county area.

Senator Farr: We're not just talking about ad valorem property tax in your operations. It would have wiped out that much -- \$366,000.00 on the ad valorem monies that are being used? Plus \$.50? What does one penny develop there in the county? That being the case, the law as I read it -- said, in essence, that they had two alternatives. Number one, was to go that route -- pay your bonded indebtedness or, Number two, place that responsibility of payment on the tax rate in the county. Now, was there an effort made in this area?

Mr. Lynch: The alternatives which were available to us -- from the best advice we could obtain from nationally recognized bond attorneys -- was to arrange for a moratorium that would preclude such items going on the tax rate. I don't want to be argumentative with this committee -- because I'm here to help you and help solve my problem -- but we took the best legal advice that was available to us as to what was the best course of action for the city to do and I don't think anybody would question the integrity of that decision.

Senator Farr: I feel that you were misinformed someplace along the line as far as paying your debts -- and I appreciate that you made an effort -- but I think you were ill-informed in taking that particular solution. It just wasn't responsible to accept that. Whoever gave that choice to you just was not looking at the law.

Senator Dodge: I'd like to ask Mr. Lynch if he feels confident under this moratorium and in this extended one year period -- will you be able to sell that Industrial Park down there and get part payment on it that will get you out of default with the Retirement Board and through the other funds that you were talking about (the contract funds coming in) will you be able to solve that problem within the next year's time? The default problem, not complete repayment?

Mr. Lynch: Anticipating that question, I asked Mr. Fadgen, who is an attorney handling the case to make a report, which says in effect, that in February he expects to move for summary judgment. That would undoubtedly, if successful, be appealed -- and we would be into an eight month to twelve months wait for the Supreme Court calendar before final decision. He indicates, in answer to the question of the kind of sale, that it would be much the same as a regular tax sale, but it would not have a period of redemption following.

Senator Dodge: What about the other alternative? Can you take care of it that way?

Mr. Lynch: The money coming in starting in October will assist us in reducing the indebtedness. Is it appropriate now to mention that we have another alternative? (Gibson: Yes.)

The last time I met with the Public Employees Retirement Board in the fall, one of their members asked if we could solve this problem by using the refunding bonds and refinancing the entire transaction -- Taking that again to our bond attorney last week, we had drafted for your consideration an act amending the charter of the City of North Las Vegas which has the effect of authorizing the city and the Public Employees Retirement Board to make a cut-off date and we have suggested April 1, 1969. At that point in time, we will owe . . . \$70,000.00 in principal and \$267,737.60 in deferred principal and interest payments. We will issue a new series of bonds for that amount which could be met by sale of land and subject to prior redemption. (Change of tape at this point. Several sentences lost.) That would give us five years to get this in the court and out.

The new refunding bonds would have the same security and the same back-up as the original bonds and they will be subject to prior redemption so that if we are successful in our sale of the land, we could retire the debt to the Public Employees Retirement Board. I have copies of what we suggest in the draft and gave Mr. Daykin a copy so he would be able to go into it and we expect a lot of assistance from Mr. Daykin in getting this in proper form and also assisting us in the preparation of the ordinance to accomplish this transaction.

Senator Farr: I see this alternative, alternative No. 3, and the first step, of course, if the legislature passes it, is changing your city charter. My question then is: Would you have any difficulty, now that there is created in that area a bond commission, in going to the bonding commission? Would this be the answer or would it still necessitate selling the bonding commission in North Las Vegas on being able to sell those bonds and secure them -- or would you have another battle there. In other words, once we leave the legislature, should it pass the last few days, you have still no security that the bond commission down there will find enough security in your proposal to allow you to sell those bonds -- or would they be able to control them? I haven't gone that far in reading this -- but I do want to ask that question.

Mr. Lynch: At the present time, the general obligation bond has no authority over the type of security you're talking about now. If they did have authority, I would have no hesitancy in going before them to set forth the facts and I believe it would be approved.

Senator Farr: That's the question I have, would they have any authority over these bonds?

Mr. Daykin: Not under present law, Senator Farr. And, of course, if there were any question in the minds of the legislature, this being a special act, this puts the "why" that notwithstanding any change in the law -- which the legislature might see fit to make -- that these particular bonds would be authorized without reference.

Chairman Gibson: The implication here is that they will negotiate with the Retirement Board -- possibly a different rate of interest would be established.

Senator Dodge: Do you have any indication that the Retirement Board might consider this?

Mr. Lynch: I spoke with Mr. at 8:30 this morning and he said that he could not speak for the Board, but that he would recommend it to the Board. He informally called a couple of members of the Board this morning and they said they would be receptive to such a transaction.

Senator Dodge: It occurred to me the other day that time would take care of this matter, one way or the other, even through monies that would be coming in on the contract of sale or on the redemption of the Industrial Park -- and it seems to me on this kind of a proposal, where you have five years on interest alone before the principal retirement starts -- that surely you ought to be able one way or the other to work it out by that time.

Chairman Gibson: I think we'll have to digest this a bit before we can give a recommendation, but it is an alternative. I would like to say that I find this preferable to SB-26.

Senator Monroe: I like this approach better, too, but I do believe we ought to look into the future financial status of North Las Vegas. I am concerned about the use of this sewer bond money to pay off not only the sewer bond principal and interest, but also loaning it to other funds to pay off other things. What will be the eventual outcome of that? Some day there will have to be a day of reckoning on that situation, is there not?

Mr. Lynch: As a matter of fact, Senator, in the last eighteen months the financial structure of the City of North Las Vegas has reversed and is going in the proper direction.

Chairman Gibson: Another part of all that we have been attempting to do since we met last time was to see how we might be able to reassure the committees in the legislature as to the financial structure of North Las Vegas. We have been in touch with some outside accountants not related in any way to the present condition to see what the feasibility of an audit of the city would be. We haven't heard from all of those we inquired of, but the initial responses indicate that it may not be practical to do this from two standpoints. One is the matter of time. One of those we contacted was Libram and they said they would be unable to enter into this type of an audit prior to March 1, because of the heavy load at this time of year and this seems to be fairly common with all the firms. Because of their professional code they are not allowed to quote a cost for such work -- but they indicated that it would be in the order of \$25,000.00. As I say, we have a couple of more inquiries out and should hear back today.

Another suggestion which has been made which merits the consideration of the committee -- at least for our own personal assurance in this matter is to pose the particular questions that we are unsure of to the present auditor of the city. They are in the process right now of updating the city audit as of December 31st. They are in a position to expand the content of the audit to reflect the particular areas that we might be interested in in more detail and in greater depth. And I think this is a possibility that we could look at. I would like to know from these other firms that we've requested -- one a Reno firm that is in this business -- what their response would be before we might decide definitely from the committee what we might want to do here. But I'm not hopeful that they might be able to do anything by the end of the session.

Mr. Lynch: Mr. Chairman, I met with the Chamber of Commerce of the City of North Las Vegas over the weekend, and after having had an opportunity to review the cash audit of June 30, 1968, and after studying the information supplied to them by the city. Tonight, at our council meeting our Chamber of Commerce will request that the City of North Las Vegas update the report of the same auditors to December 31st and to include such accrued and modified total information as the legislature may want to show the true picture of the City of North Las Vegas. I expect that request to be made tonight and be accepted by the new council and acted upon. It has been estimated that the additional cost of the additional information will run about \$2,000.00 more than would be our normal cost for a audit.

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Chairman Gibson: What about the time element? Do you have an indication of that?

Mr. Lynch: I met with Mr. Andrus on Friday and he told me if this question came up that they could expect to issue the complete report early in March.

Senator White: I might indicate some of the reaction of the Chamber of Commerce and other elected officials and different groups within our city when this became an issue earlier in the session, was to call for a full outside investigation and audit. After considering all these possibilities, I met with the taxpayer's group Saturday night and talked with the Chamber of Commerce people in my office on Friday and they are in agreement -- after looking at all the possibilities and ramifications of a complete outside audit now -- that the best approach that we could take (and they would be in agreement to accepting this type of an approach) would be to have the present auditors broaden the scope of their audit (and they are now in progress) to answer all the questions that have been raised to them and get some action while we're still in session.

One of the things that hasn't been brought up yet is that even if we went to an outside auditor and they were able to do this -- and you're talking about Mr. Andrus and your firm have indicated it would take at least six months to a year for any outside auditor to come in and get this kind of information. Then, if we want to act upon it, at that point the legislature would be out of session. We'd either have to come back into special session. This would cost the Senate in terms of \$100,000.00 to \$150,000.00.

We think that the best approach at this time, if it meets approval of this committee, would be to have this present auditing firm and again, we think that they are a reputable firm -- and particularly now that they have merged with a national firm -- and they have additional resource help available, and they can give us a complete audit and answer all the questions we may raise. We further think that as a committee we ought to make an early determination so far as the auditor is concerned as to which way you're going to go -- because time is of the essence and we can't wait too long to make this decision.

Senator Farr: I agree with what you're saying from the audit standpoint -- because this new proposal (if I read it correctly) says that the legislature further finds that the power to refund such bonds is not available to said city under either the city charter or the general law of the State of Nevada. Now, to be perfectly honest, we would have to examine that audit in detail before we could pass this legislation.

Mr. Lynch: All of our procedures for the issuance of bonds -- with two years of interest only. This proposal calls for five and that's why special legislation is needed.

Senator Dodge: I would like to ask Senator White if this national firm with which Andrus is associated have available people who are really knowledgeable and expert in the field of municipal government?

Senator White: I couldn't tell you exactly what their background is.

However, I talked to Mr. Andrus and one of the reasons for the merger was to have computers and these types of things that aid this sort of work.

Senator Dodge: Well, it seems to me that one of the other possibilities is to accept his audit. I don't think that anybody questions his audit as being factual of the situation as he found it for the period of the audit and short of an independent complete audit, try to get somebody in who is truly expert in municipal government and maybe offer some recommendations by accepting that information and making whatever interpretation is necessary and whatever additional information he might want to develop -- might want to explore in light of some conversations we had with the legislative committees here. I know that these types of people are available and if they're available in this particular firm, we hardly need go any further. If they weren't, then I think we've got a situation here which is complex and as lay legislators, frankly I think it's the sort of thing that requires the aid of people who are really knowledgeable about the proper checks and balances and all these things that should exist in municipal government.

Mr. Hilbrecht: I think there is some kind of a compromise we can come by that may yield something a little more satisfactory to the committees -- and that would be, for instance, if we used a firm that did municipal audits and have a representative of this firm advise these combined committees from the data compiled by Mr. Andrus. We might be a lot happier than having another internal man from Andrus' now national affiliation come in and interpret what in essence is their own work product. I think maybe it would be fairer to everybody involved that if at this level at least, we had an independent auditor examine their approach to these problems.

Chairman Gibson: Of course, you get into a matter of professional codes here. If this is possible, it might be an approach. We are in touch with this firm in Reno and they are looking up the situation. We haven't heard back from them yet as to what they could do. We haven't tried this suggestion, but you know it's pretty hard to get one professional to pass judgment on another professional's conclusions if he himself hasn't done the groundwork that led to those conclusions.

Senator Dodge: I accept that audit as being factually correct on the nuts and bolts information and I think somebody else who was looking at it would have to -- but the thing that interests me is the policy type decisions of how you best safeguard the interests of the people that are involved and would eventually be obligated and this sort of thing. If Mr. Andrus' firm does, in fact, have that sort of professional ability, then I think that we're that far ahead to get all the background information -- but I know for a fact that these people exist and they're specialists in it. It is a specialized area and I don't think it necessarily is in conflict. What I'm talking about is not to question Andrus' recommendation that the money be put out in separate accounts. The question is -- should there be a prohibition against the diversion of the funds set up in capital accounts

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for other uses within the city government? These are policy matters in my opinion. I'm sure there are answers to them -- based on experience.

Senator White: I think that this could be accomplished in several ways. Perhaps have a team of our own legal staff go down to do some legal interpretation.

Mr. Wood: It would seem to me that if we're thinking in terms of an audit, it would be a physical impossibility to perform any kind of an audit and get it back to this session of the legislature with any degree of accomplishment. If it's a question of "auditing the audit," I would like to offer this suggestion. I'm not sure that the firm of Kafoury and Armstrong in Reno do most of the municipal audits around our area. I don't know whether they have anyone available or whether they are familiar with the particular ordinances of North Las Vegas is something I can't answer either -- but I would certainly suggest that if we're going to accomplish anything for the purposes of this session, then we have the responsibility of taking from our legislative audit division, people who have some knowledge and can do some direction and guidance. The firm of Hancock, Fremont and Audrain also have some municipal experience.

(Further committee discussion re/auditing firms.)

Senator Farr: Clay, this is one problem and a serious one -- on the repayment of bonds and it's all geared to revenue in the City of North Las Vegas. However, your mayor sat here and mentioned increased wages and salaries, et cetera. What is the normal cost of operating the city in the future? Along with the solution we have to this problem here -- or proposed solution to this problem -- the audit will certainly deal with future revenues. Are you going to be able to maintain an incorporated city with the growth and the requirement of servicing the citizens in your area with the existing revenue should there not be a revenue increase.

Mr. Lynch: I assumed this question would come up later in the session. I think all of the cities have by resolution with the Municipal Association informed the legislature that we feel that we will have to have maximum assistance in monetary revenue from this session of the legislature. We've raised water rates, we've raised business license fees, we've imposed tax upon the telephone company and gas company. Every local possibility has been exhausted -- and we, like all the other cities, will be faced with a material change in salaries in the foreseeable future.

(Mr. Blyth then spoke briefly -- stating that if North Las Vegas was going to be in the above described financial difficulty -- so were many other cities in the state.)

Chairman Gibson: There seems to be enough interest in this approach that we can ask Mr. Daykin to begin the draft -- not any commitment to it, but so that we can see the draft. Personally, I'd like to make this thing as narrow as we can. Mr. Lynch, if I understood you correctly, the city was willing to pledge the returns of that other property contract to this specific purpose. I wonder if we might not want to include that in the draft?

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Let's leave this subject, then, for now. The next step is that we'll get in touch with the accountants. We're expecting to hear from the Reno firm today sometime. We'll pursue the suggested variation of the full audit approach with them and we'll talk to Mr. Andrus and then report back to the Committee. And we'll ask Mr. Daykin to draft the bill based on this approach -- extending the authority so that the city can refinance these bonds with the present holder on the basis of five years of interest payments, then fifteen years of equal payments of principal and interest -- with the pledge from North Las Vegas that the proceeds of the other land contract they have and also providing that this authority be limited to this one project.

There being no further business, Chairman Gibson adjourned the meeting.

Respectfully submitted,

Patricia F. Burke

Patricia F. Burke,
Committee Secretary

LAW OFFICES

SINGLETON, DELANOV, JEMISON & REID, CHARTERED
A PROFESSIONAL CORPORATION
SUITE 1000 FIRST NATIONAL BANK BUILDING
LAS VEGAS, NEVADA 89101

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AREA CODE 702
TELEPHONE
385-3373

WILLIAM SINGLETON
DRAKE DELANOV
REX A. JEMISON
HARRY M. REID

MELVIN R. WHIPPLE
DONALD R. LILES
GEORGE W. JOHNSON
JOHN FADGEN

January 30, 1969

Mr. Clay Lynch, City Manager
City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, Nevada

Re City of North Las Vegas v. Somers

Dear Clay:

Pursuant to our conversation of this date at lunch, you requested that I supply you with the following information:

1. The timetable which we anticipate to follow in bringing this suit to conclusion.
2. Whether the City ultimately, upon successful completion of this suit, would get title to the parcels which are the subject matter of the action.
3. Whether, assuming the City did get title, there would be a period of redemption in which the buyers could redeem the parcels involved.
4. Assuming the City would not get title, would there be a public sale of the property to the highest bidder, with a setup price for the amount owing on the assessment.
5. Whether the parcels in default would be sold as a whole or on an individual parcel basis.

It is my understanding you want this information so that it may be presented to a meeting of the State Legislature on Monday, February 3rd.

As I informed you, we filed a second amended complaint on January 7, 1969. The necessity for the amendment was so that we could allege that there now are two installments delinquent, rather than just one installment. The prayer for relief asked for judgment against Harry and Tessie Somers, husband and wife, and Diversified Capital Corporation (the present owners of the land) in the sum of \$2,305,106.54, plus interest and all penalties and costs. The prayer further requests a separate

Mr. Clay Lynch, City Manager - 2

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judgment against the real estate and improvements in Nellis Industrial Park in the sum of \$529,668.20 (representing two unpaid installments) and all penalties and costs, as provided by the Charter of the City. As I informed you, Chapter 3 of the Charter of the City does not set out in detail any procedure for the collection of unpaid assessments and we have, therefore, followed the procedure for the collection of unpaid assessments by the District Attorney found in Chapter 361 of the Nevada Revised Statutes. In following this procedure we find that NRS 361.665 provides that the defendants in the action must appear and answer the complaint filed in the Court on a day certain, which day shall not be less than thirty days nor more than forty days from the date of the summons. You informed me that Mr. Frank Daykin of the Legislative Council's office inquired as to why the date for appearance of the defendants was thirty-two days from the issuance of the complaint and not twenty, as is normally the case in most actions under the laws of the State of Nevada. I believe the above quoted section of the Nevada Revised Statutes will answer Mr. Daykin's question. We set the time for the defendants to answer at thirty-two days in order to comply with that section and in order that we might have the necessary time to publish, as provided in NRS 361.675, and the necessary time in which to post the property, as provided in NRS 361.68.

Defendants are now required to answer on or before February 10, 1969. We feel that their answer to the second amended complaint will be substantially the same as their answer heretofore filed in response to the first amended complaint. As soon as we have received their answer to our second amended complaint, we will thereupon serve upon the attorney for the defendants a request for admissions, which must be answered within ten days from service thereof. This is being done pursuant to Rule 36 of the Nevada Rules of Civil Procedure. In brief, these requests seek admission of the following facts: That on February 28, 1966, the City did duly assess \$2,305,106.54 on the property which is the subject of this action; that Harry and Tessie Somers at that time were the owners of the land assessed; that Diversified Capital Corporation is a successor in interest of Harry and Tessie Somers; that, in accordance with Ordinances Nos. 308 and 306, City of North Las Vegas, proceedings were taken for the issuance and sale of assessment bonds; that bonds in the amount of \$2,300,000.00, bearing interest at the rate of 4.85% per annum, were duly issued and sold; that Chapter 3 of the Charter of the City provides that assessments shall be collected in fifteen substantially equal annual installments, with interest; that Chapter 3 of the Charter provides that if any installment is not paid when due, the maturity of all

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unpaid installments shall be advanced to the date of delinquency; that the first installment in the amount of \$268,929.25 was due on February 28, 1967, and has not been paid to date; that the second installment was due on February 28, 1968, in the amount of \$260,738.95 and that that installment has not been paid to date.

It is our opinion that defendants will have no alternative but to admit that these are the facts. Assuming that the defendants did so admit, we would at that time, which would be on approximately February 21st, move for summary judgment on the basis that there is no issue as to any material facts and that, as a matter of law, the defendants are delinquent on assessment payments and that the City is entitled to judgment as a matter of law. We would anticipate that this motion would come on for hearing sometime within the first two weeks of March. If the Court saw fit to grant the motion, the matter would then be resolved; however, the defendants could appeal such determination to the Supreme Court of the State of Nevada. If the Court did not grant our motion for summary judgment, we would immediately note the matter for trial and would anticipate that such would be set for trial sometime in the early fall. Again, if an adverse verdict is entered against the defendants, they would at that time have the right to appeal to the Supreme Court.

Concerning Question No. 2, it is our opinion the City would not get title to the parcels which are the subject matter of this action, as will be spelled out below, and in answer to Question No. 3, as mentioned above, the City would not get title; however, there would be no period of redemption involved in this action.

In answer to Question No. 4, upon the obtaining of a judgment, the judgment would be a lien as in all other civil cases. Upon the entry of the judgment an execution would issue, as in other civil actions. We would thereupon execute upon the parcels which are the subject matter of this suit to satisfy the \$2,305,106.54, plus interest and penalties.

It is our opinion that the parcels could be sold individually at a setup price equal to the amount owing on each individual parcel or as a complete package with the setup price of the

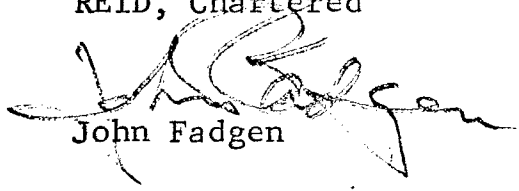
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total amount owing on the unpaid assessments on the entire
parcel.

Sincerely yours,

SINGLETON, DE LANOY, JEMISON &
REID, Chartered



John Fadgen

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AN ACT AMENDING THE CITY CHARTER OF THE CITY OF NORTH LAS
VEGAS (Chapter 283, Statutes 1953, as amended).

The People of the State of Nevada represented in Senate and
Assembly, do enact as follows:

SECTION 1. The Legislature finds that where proceedings have been taken pursuant to the provisions of Chapter III of the City Charter of the City of North Las Vegas pursuant to which assessment bonds have been issued, and where there is a deficiency in the bond fund resulting from the failure of the owner or owners of the properties subject to assessment to make full and timely payments of the installments of assessments in amounts sufficient to enable the City to pay principal and interest on said bonds as same falls due, and where the City has undertaken proceedings pursuant to Section 87 of its Charter for the institution of legal proceedings to foreclose the assessment lien, and where all of said bonds have been purchased and are being held by the State or one of its agencies, departments or political subdivisions, that the City should have the power to refund such bonds as an alternative to the requirement that the City make up any deficiency in said bond fund from the general fund of the City and to levy a tax on all taxable property in the City in order to provide adequate monies in said general fund for such payment. The Legislature further finds that the power to refund such bonds is not available to said City under either the City Charter or the General Laws of the State, and that in order to provide such power it is necessary that the said City Charter be amended as hereinafter set forth.

SECTION 2. That the City Charter of the City of North Las Vegas be amended by having added thereto Section 106, being part of Chapter III of said City Charter, as follows:

"Section 106. Issuance of Refunding Bonds.

"1. If the special fund created by the proceeds of the assessments is insufficient to pay any bonds and interest thereon issued pursuant to this Chapter III as they become due, the City shall have the power, with the consent of the holder or holders of all of

such bonds which are outstanding, to issue refunding bonds pursuant to this Section to the holder or holders of such outstanding bonds in such amount or amounts as may be agreed upon by the City and such holder or holders of such bonds.

"2. Any such refunding bonds shall be issued by ordinance of the City Council, which ordinance shall fix the maturities of such bonds which shall commence not later than 6 years and end not later than 20 years from their date, and which shall fix the maximum interest rate or rates which shall not exceed 7% per annum, interest payable annually or semiannually, and which shall fix the principal amount of such refunding bonds which shall not exceed the principal amount of bonds being refunded together with accrued interest and penalties as may be payable thereon, together with the cost of issuance of such refunding bonds. In all other respects such bonds shall comply with the requirements of this Chapter III except that said bonds shall contain a recital on their face stating that they are issued for the purpose of refunding outstanding bonds, which bonds shall be identified by reference to date, series, improvement district number or some other means sufficient to clearly identify same.

"3. Issuance of refunding bonds pursuant to this Section 106 shall in no way amend, alter or abridge the liens securing the bonds being refunded and said liens shall remain in full force and effect and shall constitute security for the refunding bonds to the same extent and in the same manner that they constituted security for the bonds refunded, and such issuance shall not reduce the amounts payable by the owner or owners of the properties on which said liens were placed, said amounts being payable as assessments or installments thereof together with such interest or penalties as may be properly payable thereon; provided, however, that the issuance of such refunding bonds shall in no way increase the obligations of the owner or owners of the property or properties on which said liens were placed without the written consent of such owner or owners of such properties; and provided further that the issuance of any such refunding bonds shall not have any effect on any action or proceeding instituted to foreclose any such assessment lien. To the extent that any such refunding bonds are issued in an amount in excess of the principal amount of the bonds to be refunded together with accrued interest and penalties thereon, any such sum in excess of such amount shall be paid from the general fund of the City.

"4. Notwithstanding any other provision of law to the contrary, refunding bonds issued pursuant to this Section constitute legal investments pursuant to Section 105 hereof, and the State and any of its agencies, departments or political subdivisions or any other public body may invest in refunding bonds by taking such bonds in exchange for other bonds held by it and refunded in the manner prescribed herein.

"5. Bonds issued pursuant to this Section shall be dated the same day and month as the bonds refunded.

"6. The authority to issue refunding bonds pursuant to this Section shall expire on December 31, 1969.

"7. The authority to issue refunding bonds is alternative to the authority the City has to make payments into the bond fund pursuant to the provisions of Section 97 hereof."

SECTION 3. This Act shall become effective upon passage and approval.