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M E M O R A N D U M

TO VIRGINIA VALENTINE, County Manager
FROM MARY-ANNE MILLER, County Counsel
DATE July 21, 2009
SUBJECT Cap on County Expenditure for Indigent Care

This office has been presented with a number of questions concerning limitations on the County's ability to fund aid to indigents. This memo is intended to address those inquiries.

The County's authority to provide medical and financial assistance to the indigent is derived from Chapter 428 of the Nevada Revised Statutes. Chapter 428 provides specific requirements for a County program of medical aid (i.e., emergency medical care, necessary medical care) and makes discretionary the provision of financial services. NRS 428.030 grants the Board of County Commissioners the discretion to:

- (a) Make contracts for the necessary maintenance of indigent persons;
- (b) Appoint such agents as the board deems necessary to oversee and provide the necessary maintenance of indigent persons;
- (c) Authorize the payment of cash grants directly to indigent persons for their necessary maintenance; or
- (d) Provide for the necessary maintenance of indigent persons by the exercise of the combination of one or more of the powers specified in paragraphs (a), (b) and (c).

Each of these grants of authority is, however, specifically capped by statutory mandate. NRS 428.030(1) establishes a recipient's right to receive aid but only "within the limits of the money which may be lawfully appropriated pursuant to NRS 428.050, 428.285 and 450.425 for this purpose." Further, in NRS 428.050, a section entitled "**limitations on expenditures and transfers**", the county is expressly prohibited from spending more than what can be levied as a tax under that chapter:

No county may expend or contract to expend for that aid and relief a sum in excess of that provided by the maximum ad valorem levy set forth in subsection 1 of this section and NRS 428.185, 428.285 and 450.425, . . . together with such outside resources as it may receive from third persons, including, but not limited to, expense reimbursements, grants-in-aid or donations lawfully attributable to the county indigent fund. (emphasis added)

NRS 428.185 allows for the levy of taxes for hospital care and NRS 428.285 establishes the Supplemental Fund, the proceeds of which are also available to the County for indigent care. To ensure that indirect methods of supplementing the funds outside these permitted levies are not attempted, Subsection 4 of NRS 428.050 also mandates that “no interfund transfer, medium-term obligation procedure or contingency transfer may be made by the board of county commissioners to provide resources or appropriations to a county indigent fund in excess of those which may be otherwise lawfully provided pursuant to subsections 1, 2 and 3 of this section and NRS 428.185, 428.285 and 450.425.” Nothing in NRS 428.050 indicates that the “aid and relief” which is capped is only medical aid. The language above makes direct reference to the monies levied under NRS 428.050 as well as other statutory sources and necessarily includes all such levies. No rule of statutory construction would allow a reading of this statute to limit the cap to only medical expenditures.

These statutory subsections provide a clear limitation on the County’s authority to provide aid to the indigent and must not be disregarded. Failure to abide by a statutory limitation on authority to expend money is a classic example of malfeasance in office, which bears a host of potential consequences.

The statute does allow a county to seek or accept grants, donations, and other outside funds and commit them to indigent care. Finally, one exception is found in statute for using county funds in excess of the cap. NRS 428.050(4) provides: “If the health of indigent persons in the county is placed in jeopardy and there is a lack of money to provide necessary medical care under this chapter, the board of county commissioners may declare an emergency and provide additional money for medical care from whatever sources may be available.”

A question has been posed whether an emergency currently exists which would allow the Commissioners to make such a declaration. The word “emergency” is not defined in this chapter, but in Nevada law it is usually construed to mean an unexpected, unforeseen event, or a disaster, which causes potential harm to the residents. *See, e.g.,* NRS 332.112; NRS 455.090; NRS 414.0345. It does not appear that the current anticipated drop in funding can be said to be unforeseen.

Monies levied under NRS 428.050 and the other statutory funds are deposited into the Fund for Hospital Care to Indigent Persons pursuant to NRS 428.175. The 2009 Legislature enacted SB 431. Section 20 of this bill raids that fund in the amount of \$25,199,365 in Fiscal Year 2009-2010 and \$22,970,977 in Fiscal Year 2010-2011, for the State’s unrestricted use. In enacting this diversion of funding for indigent care, the Legislature failed to grant any additional authority to

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the County to supplant these funds. As such, the drop in County funding for indigent care cannot be construed as an unexpected event, and the County may not declare an emergency, merely to replenish monies that the State Legislature purposely redirected.

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