

Senate

COMMITTEE ON FEDERAL, STATE AND LOCAL GOVERNMENTS

Minutes of Meeting -- March 27, 1973

The thirty-first meeting of the Committee on Federal, State and Local Governments was held on the 27th day of March, 1973.

Committee members present: Chairman James Gibson
John Foley
Stan Drakulich
Carl Dodge
Chic Hecht
Lee Walker
Coe Swobe

Also present were:

Geno Del Carlo
Gary Gray, Clark County School District
Bill Adams, City of Las Vegas
Angus MacEachern, Clark County
Kevin Efroymsom, Clark County
Judge Gunderson
Samuel M. Ford
Bernard Malamud, University of Nevada
Robbins Cahill, Downtown Association
Tom E. Smith
A. J. Cavanaugh, Custom Cabs, Inc.
W. J. Hesse
Mary Kozlowski
Press

Chairman Gibson called the meeting to order at 7:00 P.M. The first bill to be considered by the committee was as follows:

SB-418 Amends provisions concerning trusts for public functions.

Dr. Samuel Ford of Clark County testified before the committee on SB-418. A copy of his testimony is attached hereto as Exhibit "A".

Mr. Bernard Malamud, Professor Economics with the University of Nevada, Las Vegas, read a prepared statement from William T. White, also of the University of Nevada, a copy of which is attached hereto as Exhibit "B". He testified that he believes Nevada's present trust law is weak because: (1) it does not require competitive bidding on bonds issued by a trust or on contracts that the trust enters into; and (2) the way the law is worded, just about any type of tax-paying enterprises could be granted the privileges a trust enjoys, so long as it "provides funds for the furtherance" of a public function.

SB-418 corrects these anti-competitive aspects of the Public Trust Law. As regards competitive bidding on bonds and contracts, it is important to taxpayer interests that costs incurred by a public trust be minimized. Mr. Malamud submitted a letter addressed to Senator Foley, a copy of which is attached hereto as Exhibit "C".

The committee heard extensive testimony from Robbins Cahill, representing the Downtown Association of Las Vegas, and Mr. A. J. Cavanaugh, representing Custom Cabs, Inc. Mr. Cavanaugh submitted an "Agreement" to the committee which has been approved by the City of Las Vegas, and is attached hereto as Exhibit "D". He stated that plans had been submitted to the county and they would soon be in a position to make a decision on which of three systems they would like to have and whether or not they can finance them under this plan. It is the only plan that will permit a job of this kind of become a reality at no risk to the communities involved. Mr. Cavanaugh emphasized that if this bill, as presently written is passed, it will kill the Las Vegas transportation system.

Mr. Tom Bell, attorney from Las Vegas, testified that he has heard no negative responses to the proposed monorail plan. The only thing that has been authorized at this point is a feasibility study and recommendations from leading experts. Mr. Leonard Thieberg of Chula Vista, California also spoke on this legislation. Mary Kozlowski of the Open Spaces Council spoke in support of revision of the Public Trust Act and urged passage of SB-418. Mrs. MacEachern submitted a statement on this act, a copy of which is attached hereto as Exhibit "E". Mr. Tom Smith of the Public Service Commission and Mr. Bruce Glidden of the Bridge Division of U.S. Steel both spoke briefly on this bill.

AB-632 Extends power of Governor under Local Government Employee-Management Relations Act to make certain factfinding procedures binding.

Mr. Gary Gray, Clark County, spoke on AB-632. Senator Swobe suggested an amendment limiting this to school districts. Following a brief discussion Senator Swobe moved "Amend and Do Pass," seconded by Senator Foley. Motion carried.

AB-660 Changes qualifications for judges of municipal courts of cities of Reno and Las Vegas.

Judge Gunderson testified before the committee on this bill, stating that he believes this to be sound legislation. Following discussion, Senator Drakulich moved to "Hold Indefinitely," seconded by Senator Foley. Motion carried.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Mary Jean Fondi,
Committee Secretary

S. B. 418

SENATE BILL NO. 418—SENATOR DODGE

MARCH 12, 1973

Referred to Committee on Federal, State and Local Governments

SUMMARY—Amends provisions concerning trusts for public functions.

Fiscal Note: No. (BDR 19-1058)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to trusts for the furtherance of public functions; providing that statutes and local ordinances requiring competitive bidding on debt obligations apply to such trusts; providing that contracts let for such trusts shall be governed by the purchasing act applicable to the beneficiary; requiring a trust created for a public function to obtain a certificate of convenience from the public service commission; providing other changes; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 242B.010 is hereby amended to read as follows:
2 242B.010 1. Express trusts may be created in real or personal prop-
3 erty, or either or both, or in any estate or interest in either or both, with
4 the state, or any county, municipality, political or governmental subdivi-
5 sion, or governmental agency of the state as the beneficiary thereof, and
6 the purpose thereof may be the furtherance [, or the providing of funds
7 for the furtherance,] of any authorized or proper function of the bene-
8 ficiary; but no funds of the beneficiary derived from sources other than
9 the trust property, or the operation thereof, shall be charged with or
10 expended for the execution of the trust, except by express action of the
11 legislative authority of the beneficiary first had.
12 2. The officers or any other governmental agencies or authorities
13 having the custody, management or control of any property, real or per-
14 sonal or both, of the beneficiary of such trust, or of such a proposed
15 trust, which property is necessary for the execution of the trust purposes,
16 are hereby authorized and empowered to lease such property for such
17 purposes, after the acceptance of the beneficial interest therein by the
18 beneficiary as provided in this chapter, or conditioned upon such accept-
19 ance.
20 SEC. 2. NRS 242B.030 is hereby amended to read as follows:
21 242B.030 The instrument or will creating such trust may provide for

A. B. 632

ASSEMBLY BILL NO. 632—COMMITTEE ON
GOVERNMENT AFFAIRS

MARCH 14, 1973

Referred to Committee on Government Affairs

SUMMARY—Extends power of governor under Local Government Employee-
Management Relations Act to make certain factfinding procedures binding.
Fiscal Note: No. (BDR 23-1636)

EXPLANATION—Matter in *italics* is new; matter in brackets [] is
material to be omitted.

AN ACT to amend NRS 288.200, relating to the submission of certain labor dis-
putes to factfinding, by extending the governor's power to make such factfind-
ing binding; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 288.200 is hereby amended to read as follows:
2 288.200 1. If by March 1, the parties have not reached agreement,
3 either party, at any time up to April 1, may submit the dispute to an
4 impartial factfinder for his findings and recommendations. These findings
5 and recommendations are not binding on the parties except as provided
6 in subsections 6 and 7.
7 2. If the parties are unable to agree on an impartial factfinder within
8 5 days, either party may request from the American Arbitration Associa-
9 tion a list of seven potential factfinders. The parties shall select their fact-
10 finder from this list by alternately striking one name until the name of
11 only one factfinder remains, who will be the factfinder to hear the dispute
12 in question. The employee organization shall strike the first name.
13 3. The local government employer and employee organization each
14 shall pay one-half of the cost of factfinding. However, each party shall
15 pay its own costs of factfinding incurred in the preparation and presenta-
16 tion of its case in factfinding.
17 4. The factfinder shall report his findings and recommendations to
18 the parties to the dispute within 30 days after the conclusion of the fact-
19 finding hearing. Such report shall be made no later than May 5 except as
20 modified by the provisions of subsection 5.
21 5. In a regular legislative year, the factfinding hearing shall be stayed:
22 [up]
23 (a) *Up to 15 days after the adjournment of the legislature sine die if*
24 *the governor has exercised his authority pursuant to subsection 7.*

(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT

A. B. 660

ASSEMBLY BILL NO. 660—COMMITTEE ON
GOVERNMENT AFFAIRS

MARCH 16, 1973

Referred to Committee on Government Affairs

SUMMARY—Changes qualifications for judges of municipal courts of cities of
Reno and Las Vegas. Fiscal Note: No. (BDR S-1239)



EXPLANATION—Matter in *italics* is new; matter in brackets [] is
material to be omitted.

AN ACT relating to the municipal courts of the cities of Reno and Las Vegas;
providing amended qualifications for the judges thereof; and providing other
matters properly relating thereto.

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

- 1 SECTION 1. Section 4.020 of Article IV of the charter of the City of
2 Las Vegas, effective July 1, 1973, being chapter 515, Statutes of Nevada
3 1971, at page 1076, is hereby amended to read as follows:
4 Section 4.020. Municipal court: Qualifications of municipal judges;
5 salary.
6 1. Each department of the municipal court shall be presided over
7 by a municipal judge, who shall be:
8 (a) [Not less than] *Over 25 years of age.*
9 (b) [A citizen of the United States.] *An attorney licensed to practice*
10 *law in the State of Nevada or a previously elected and presently incum-*
11 *bent judge of the court.*
12 (c) A registered voter [for a continuous 2-year period immediately
13 preceding the year in which he is elected.] *of the city.*
14 2. The salary of the municipal judges shall be fixed by the board
15 of commissioners.
16 SEC. 2. Section 4.020 of Article IV of the charter of the City of
17 Reno, effective July 1, 1973, being chapter 662, Statutes of Nevada
18 1971, at page 1976, is hereby amended to read as follows:
19 Section 4.020. Municipal court: Qualifications of municipal judge;
20 salary.
21 1. The municipal court shall be presided over by a municipal judge,
22 who shall be:
23 (a) [Not less than] *Over 25 years of age.*

Text of testimony on SB 418
A bill to modify the Public Trust Law
Federal, State & Local Government Committee
27 March, 1973 - Samuel M. Ford, M.D.

In an effort to help communities finance project of public benefit beyond their financial capabilities, the Senate last session passed a trust law to allow private participation. In creating the Public Trust Law 242 B of the NRS several deficiencies appeared which if allowed to remain could unfavorably reflect on the governmental entities participating in such trusts. SB 418 before you tonight seeks to correct these defects.

To more sharply define the scope of public trusts to those projects of a proper or authorized function of government, SB 418 removes the phrase "or the providing of funds for the furtherance" from the law. Allowing it to remain opens a wide spectrum of business ventures which could be entered by the governmental entity solely to raise funds. A city for example could go into partnership for a shopping center or a land subdivision with any mutually agreed upon split of the profits, in competition with private developers using tax exempt bonds for financing if it so chose. Is this a proper function of government in the public interest?

In Oklahoma where a public trust has been in effect for some time the projects thus far have been closely related to a bonafied public functions, public buildings, water projects, toll roads, etc. To deviate from this principal magnifies the potential problems if a trust fails. Where a clear public need for service exists, it would be logical and proper for the governmental unit to step in and operate the project for the public good. However in the case of a project solely entered into to raise funds, considerable problems may arise in case of a failure.

An example might be the proposed \$150 million dollar Las Vegas Trade Center. It would be constructed as would be most of these projects, on public land. Designed as a trade center, it it might not be amenable to conversion to other uses. In case of a failure, what does the city have? A massive structure not readily usable for other purposes sitting empty on its valuable downtown property. True the city has no direct liability for the bonds but what can it do with the property with a building it doesn't own sitting on it in receivership? Further, can anyone doubt that the legal mess created could do other than injure the city's credit rating or its own future revenue bonds?

Thus it is mandatory that the scope of the public trust law be restructured to limit it to projects of an authorized function. At least this way if local government has to step in, a needed public service can be continued.

SB 418 will also insure that by regulating the terms of office

Exhibit "A"

of the trustees that they will remain responsive to the appointing governmental body. The present law would allow terms of such inordinate length that the trustees could in effect be beyond public control. The proposed change to 4 year terms would be consistent with general practice as it relates to appointed boards. Theoretically, under the present language, the trustees have co-option which would allow them to appoint their successors.

A very fundamental and necessary change in the Public Trust Law proposed by SB 418 is in the area of competitive bidding. As the law now stands, public trusts are exempt from all provisions of any statute relating to the issuance of public securities, debt obligations or even the letting of contracts for construction.

If the Securities Act on competitive bidding for the bonds doesn't apply, a rate of interest set by negotiation might be higher than otherwise available. Such a rate would tend to make the trust less viable and increase the ultimate costs to the public through the increased debt service requirements. It should be noted that the changes being proposed for the State Retirement and NIC funds are all oriented toward more flexible and aggressive investment policies. What would be more logical in massive bond floats of the order of \$120 to \$150 million dollars for a public trust than to allow Nevada pension funds to participate. To restrict their purchase of these issues as being too speculative, would cast apall on their issuance to the general public. A failure of a trust in such a situation would be truly catastrophic to the State. Can we assume in such an instance that the local government participating as beneficiary in the trust would absolve itself of all responsibility for the bonds? Granted compliance with the State Securities Act won't insure against failure, but it seems logical to afford the trust every safety factor available.

The exemption from competitive bidding on construction is particularly strange when examined in relation to the Oklahoma law used as a model. It states "Contracts for construction, labor, equipment, material or repairs in excess of Two Thousand Dollars (\$2000.00) shall be awarded by public trusts to the lowest and best competitive bidder, pursuant to public invitation to bid,..." To the extent that costs to the trust are made higher by virtue of inflated bond issues not reflecting true costs of construction, the costs borne by the public inevitably increase and the viability of the trust itself is jeopardized.

Adequate safeguards are difficult to implement at best (witness the controversy surrounding recent McCarren Airport contracts) without allowing giant loopholes as exist in the present law to remain. The public's confidence in the integrity of government requires that changes be made in this whole area of competitive bidding as it applies to public trusts.

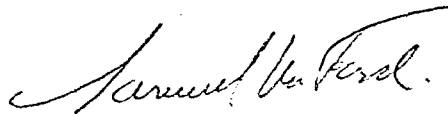
Finally the removal of a public trust from the language of Sec. 5 NRS 704.340 would put such trusts contemplating a utility service back under the jurisdiction of the PSC

As the law now stands, once the trust has gotten PSC approval of its plans it is exempt from further review. In the case of the proposed Las Vegas monorail where the local bus line will be incorporated into an area wide system, the trustees are in the unenviable position of trying to maximize profits for the beneficiaries, yet satisfy public demands for improved or expanded service on uneconomic bus routes.

The trust is not required to maintain any of these routes once the initial approval is granted. It can modify the rate structure at will and does not have to provide public hearings. Further it will maintain its control over the mass transit of the Las Vegas Valley for 40 years with all the attendant need for changes brought about by changing population distribution and age and socio-economic patterns requiring services. The structure of the present trust insulates it from public pressures and allows it to be unresponsive to local citizen needs.

A return to PSC control in these areas allows the trustees to concentrate on the operation and financial aspects of the trust and insures at the same time adequate public safeguards and avenues of appeal.

Thank you for this opportunity to appear before you and urge your approval of these very necessary changes in the Public Trust Law.



Samuel M. Ford, M.D.

Outline of changes to the Public Trust Law
proposed by SB 418

Testimony of Samuel M. Ford, MD
before the Federal, State & Local
Government Committee 3-27-73

1. SB 418 more sharply defines the scope of public trusts to those clearly of a proper or authorized function of government.
Eliminates: projects designed solely to raise funds
Rationale: Almost any conceivable project can be justified under the latter, be built on public property, and in case of failure:
 - a.) tie up the property for further public use.
 - b.) result in a structure not adaptable to other uses
 - c.) injure the local government's credit rating on subsequent revenue bonds of its ownBy limiting the trust law to projects of an authorized function, the local government can step in, continue to operate a needed service and thus salvage something.
2. SB 418 provides for finite terms of office for trustees (4 yrs.)
Eliminates: present latitude in appointments.
Rationale: Present law allows terms of any length and in effect trustee's could be beyond public control and less responsive to changing situations.
The proposed change is reasonable and consistent with general practice as it relates to appointed boards and does not limit reappointment.
3. SB 418 requires compliance with Securities Laws as they relate to competitive bidding on bonds, etc.
Eliminates: present exemption from any statute regulating issuance of securities or debt obligations.
Rationale: A negotiated bid rather than competitive bids might result in an interest rate higher than necessary.
If a local government becomes the receiver of a trust that fails, what happens to bonds if some are:
 - a.) owned by Nevada citizens?
 - b.) a state or local pension trust fund?Can we assume in that case the local government as a beneficiary of the trust, ^{could} morally absolve itself of any responsibility to the bond holders?
The proposed change would help insure that the best possible rate of interest had been secured for the trust.
4. SB 418 requires compliance with purchasing acts as they relate to competitive bidding.
Eliminates: the present exemption from any statute requiring competitive bids for construction, engineering, etc. on a public trust project.

Rationale: Present law permits:

- a.) bond issues inflated beyond true costs of the project with attendant possible kick-backs and collusion
- b.) preferential treatment to certain contractors
- c.) irreparable damage to the public image of a governmental unit participating as a beneficiary.

The proposed change helps insure that projects built will be at a competitive and not inflated cost and thus further insure their viability.

5. SB 418 removes all reference to Public Trusts as they relate to the PSC and in effect places those trusts contemplating a utility function back under full PSC control.

Eliminates: present language that would require only that such a trust would have to submit a plan for approval without any subsequent PSC review or control.

Rationale: As the law now stands, once the trust has gotten PSC approval of its plans, it is exempt from further review. In the case of the proposed Las Vegas monorail where the local bus line will be incorporated into an area wide system the trustees are in the unenviable position of trying to maximize profits for the beneficiaries, yet satisfy public demands for improved or expanded service on uneconomic bus routes.

The trust:

- a.) is not required to maintain any of these routes
- b.) can modify the rate structure at will
- c.) does not have to provide public hearings
- d.) will maintain its control over the mass transit of the Las Vegas Valley for 40 yrs. relatively insulated from public pressures and unresponsive to local citizen needs.

A return to PSC control in these areas allows the trustees to concentrate on the operation and financial aspects of the trust and insures at the same time adequate public safeguards and avenues of appeal.

March 27, 1973
William T. White
University of Nevada, Las Vegas
Las Vegas, Nevada 89154

Senator James I. Gibson
Chairman
Committee on Federal, State and Local Governments
Senate of Nevada
Carson City, Nevada 89701

Dear Senator Gibson,

Regretfully, prior commitments do not allow me to attend your committee's hearing on S. B. 148. I would be grateful if your committee would give consideration to the following points:

(1) The provision which would prevent the use of estate trusts in financing beneficiary activities would remove much of the great potential this financing mechanism has for reducing tax payer burdens. Facilities such as county hospitals and transit systems very well might become self supporting through judicious use of estate trusts. The costs to tax payers of other public or semi-public facilities might be considerably reduced. We no longer live in an era in which the sectors of business and government were sharply distinct. Reasonable use of business methods to finance our public services which otherwise could not be available is increasingly appropriate.

(2) The application of competitive bidding to the type of projects suitable for estate trusts seems inappropriate. The public trust mechanism is designed for, and to my knowledge, has been used for large expensive programs, the final costs of which are difficult to estimate. This is especially true if new technology is involved. Realistic costs of such projects can be well made only by closely coordinated joint planning and study by the public officials involved and firms which have demonstrated capability in the project area. The record of competitive bidding as a means of selection in such projects is extremely poor.

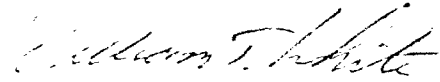
(3) The estate trust mechanism in the current law has not yet been given an effective trial. Many of the projects for which it may prove to be most useful are only in the stage of initial contemplation. I believe it particularly important not to constrain the mechanism itself on the basis of problems or

Exhibit "B"

possible problems seen by some in any one or two contemplated uses of the mechanism. It seems reasonable for the legislature to permit the law to remain essentially as it is for at least two more years.

Thank you for your consideration.

Respectfully,



William T. White

WTW:gw

1461 Commanche Drive
Las Vegas, Ne 89109

March 18, 197.

Senator John P. Foley
State Legislative Building
Carson City, Nevada 89701

Dear Senator Foley:

I ask your support of stricter public controls over "trusts for the furtherance of public functions," as promised by SB 418. I believe that Nevada taxpayers run a substantial risk of financial responsibility for revenue bonds issued by such public trusts. Taxpayer interests should therefore weigh heavily in a public trust's policy and operating decisions, including financing and purchasing decisions.

Public trust status give an enterprise providing a public service an advantage in acquiring debt financing. Such advantage is warranted when the enterprise serves a public need, e.g., a mass transit system, a public arena, or a recreational park. Given the choice between these services being provided by private enterprise or government agency, I opt for private enterprise: there is a profit incentive for efficient operations.

Yet any enterprise that aims at a profit can easily incur a loss. When that enterprise is a public trust, I ~~fear an implicit responsibility~~ ^{expect} for the public to make good its obligations should the venture prove unprofitable. Let me quote from an article by Charles G. Burck in the March 1973 issue of Fortune Magazine, "It's Promoters vs. Taxpayers in the Superstadium Game."

The situation described
is outside

"The taxpayer rarely understands what he is in for when a stadium project is first announced. To drum up public support, the advocates of a stadium generally understate the probable costs...They also overstate probable revenues...The taxpayer discovers that civic pride has been compromised by special interests; blind boosterism, and inept planning...The "can-do" spirit becomes vitiated by a lingering bitterness that can undercut a city's ability to finance other and perhaps more important projects."

The particular article concerns sports stadiums in Seattle and New Orleans, with estimated costs of \$65 million and \$151 million, respectively. It reflects, however, my apprehensions about an elevated rail transit system proposed as a public trust for Clark County and costing about as much as these stadiums (estimates currently range from \$30-120 million). Should cost estimates prove to be conservative (less than a year ago, monorail system cost was estimated at only \$40 million) or revenue estimates prove to be optimistic, Clark County taxpayers may find themselves "holding the bonds" on an elevated white elephant.

the monorail.

Exhibit "C"

To again quote Burck's article,

"When is a revenue bond a general-obligation bond? The answer, it appears, is that whenever a revenue bond is used to finance a public project that cannot pay for itself, it turns into a general-obligation bond. ~~The conversion is easily effected;~~ the structure...is leased to a government agency, which in turn pledges to pay "rent" that goes toward repaying any costs of the bonds not covered by... income. The agency, of course, has access to what the law calls "the full faith and credit" of the people--i.e., the same flow of money that normally secures a general-obligation bond."

Because of such eventuality, it is essential to the public interest that debt financing and equipment procurement by a public trust in Nevada be subject to ~~the~~ competitive bidding. ~~provisions of Nevada law.~~ SB 418 would accomplish this, assuring minimum financing and purchasing costs and hence a minimum general obligation should events force responsibility for a public trust onto the taxpayer.

Very truly yours,

Bernard Malamud, Ph.D.
(Associate Professor of Economics
University of Nevada, Las Vegas)

cc: Senator James I. Gibson, Chairman
Federal, State, and Local Governments Committee

AGREEMENT

THIS AGREEMENT made and entered into this 30th day of DEC. 1971, by and between the City of Las Vegas, Nevada, and the County Commission of Clark County, Nevada, hereinafter referred to separately as "City" and "County" respectively and collectively as "City County", and a joint venture composed of Custom Cabs, Inc., a corporation having its principal office and place of business in Las Vegas, Nevada, and A.J. Kavanaugh and Associates, Inc., a corporation having its principal office and place of business in Oklahoma City, Oklahoma, hereinafter called "Contractors".

WITNESSETH:

WHEREAS, there exists a critical need for an efficient elevated rapid transit system("System") to serve the City of Las Vegas and portions of Clark County, outside the corporate boundaries of said City which would connect McCarran International Airport with various business districts, of the City, the entertainment centers, hotels and other points of interest within the Las Vegas metropolitan area; and

WHEREAS, neither the City nor the County presently have funds with which to plan, construct, acquire and operate such System; and

WHEREAS, a vehicle for the financing, construction and operation of various public improvements was made available by the enactment of Senate Bill No. 607 at the 1971 Session of the Nevada Legislature which provides for the creation of public trusts having the State or any county, municipality, political or governmental

subdivision as beneficiaries thereof, such trusts having authority to issue securities or evidences of indebtedness to provide funds for the furthering of authorized and proper functions of their beneficiaries and to repay indebtedness out of revenues; and

WHEREAS, Contractors⁽¹⁾ have offered to contract with a public trust having as its beneficiary or beneficiaries, either the City or the County or both the City and the County, to do necessary preliminary engineering, design and feasibility studies and, if such System should be found by the interested parties to be economically feasible, to design, construct, operate and maintain such System.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

1. Contractor shall have the exclusive right, for a period of two (2) years after the acceptance of an assignment of this agreement by the public trust to be created as herein provided, to do, or cause to be done, certain "preliminary work" consisting of investigations, studies, traffic surveys, preliminary planning and engineering, development of performance criteria, preparation of cost estimates and such other things as may be necessary in order to determine the engineering and economic feasibility of the System. Contractor shall promptly proceed in good faith with such preliminary work and agrees that a report as to the technical and economic feasibility of systems shall be made to the trustees of such public trust within such two (2) year period.

2. If, after completion of the preliminary work mentioned above in paragraph 1, it should be determined by the interested parties including the County and the parties to this Agreement, that the System, or a substantial portion thereof, is technically and

economically feasible, the trustees of such trust and Contractor shall, without unnecessary or unreasonable delay, cooperate and use best efforts to mutually agree upon a definitive contract, which shall provide that Contractor shall manufacture, engineer, construct and arrange for the financing of such System with revenue bonds to be issued by the trust, and that upon the completion of construction thereof Contractor, or an operating company formed by Contractor, shall have the exclusive right, duty and obligation to operate and maintain the System until the expiration of forty (40) years after the date of its completion and acceptance by such trust or until the retirement of all indebtedness incurred by the public trust in the acquisition and construction of the System, whichever shall last occur.

3. City County shall furnish all necessary rights of way for the System at no cost or expense to the Trust or Contractors by permitting the use of street and highway rights of way, other public ways and lands owned or controlled by either of them for such purpose.

4. Within sixty (60) days from the date hereof, the City County, or either or them, shall cause a public trust to be created as authorized by the hereinabove mentioned Act of the legislature with the City, the County, or both, or the State of Nevada as the beneficiary thereof for the purpose of acquiring and owning said System and to provide a vehicle for obtaining funds with which to accomplish such purpose. It is understood and agreed that the City County will assign this agreement to the trustees of such trust and that such trustees shall undertake all of the duties and obligations herein set forth to be performed hereunder by either City County or such trustees provided, however, that the City County shall not be

relieved by such assignment of the obligation of furnishing necessary rights-of-way and of cooperating generally with Contractors and the trust in the project. It is further understood and agreed that such trust after the approval by the County Commissioners will issue revenue bonds in such principal amount as may be required to pay construction costs with adequate allowance for contingencies, to provide for payment of interest during construction and to provide required reserves for debt service and to provide working capital. The System shall be owned by the trust subject only to the security interests of bond holders or lenders in connection with the financing of the project and to the operating rights of Contractors, or an operating company formed by them, as hereinafter provided in paragraph 6.

5. Legal counsel of the City, the County and the trust will cooperate with legal counsel of the Contractors and of their supporting associates in the preparation of the instruments, documents and agreements necessary to the successful financing, construction, maintenance and operation of the System. All such instruments, documents and agreements shall be prepared with due regard as to their effect on successful financing, construction and operation of the facility and shall be mutually agreeable to the parties involved.

6. In consideration of the rights granted to Contractors under paragraph 1 hereof, Contractors agree that after the System shall have been constructed and placed in operation, Contractors shall operate and maintain said System in accordance with standards and conditions to be mutually agreed upon, that it will collect all fares and receive all revenues of the System, and that all funds over and above the cost of operation, maintenance, taxes and the

funds required for reserves and other purposes under the trust documents and bond indentures shall be shared equally between the trust and the Contractors, or an operating company to be formed by them.

7. It is understood that City County has relied upon the following representations by Contractors:

(a) Contractors have an agreement with United States Steel Corporation (American Bridge Division) to provide overall coordination and supervision of the preparation of specifications, to provide assistance in the design of the support structures, to serve as prime contractors for the construction of the System and to guarantee the performance thereof for a specified period of time as therein provided.

(b) Contractors have an agreement with John Nuveen and Co., investment bankers of Chicago, Illinois, a wholly owned subsidiary of Investors Diversified Services, Inc., to act as managing underwriters and to consult and advise with Contractors and with the trustees of the trust in order to expedite the financing and construction of the System. Such investment bankers have agreed to act as financial advisors to the trust and the Contractors, and, when all conditions precedent to the financing and construction of the project have been met, satisfactory engineering and feasibility reports have been received and necessary contracts satisfactory to them for the construction and operation of the facility and to provide adequate

arranged and are ready for execution, to enter into a bond purchase agreement with the trust on behalf of themselves and an underwriting group of investment bankers to be formed by them, for the purchase of the revenue bonds to finance the project at a price compatible with the market at the time for bonds of like character which are similarly secured. The County shall have the right to determine whether or not said bonds are at a price compatible with the bond market.

(c) Contractors have an agreement with Hudgins, Thompson, Ball & Associates, Inc. of Oklahoma City, Oklahoma and Washington, D.C. to perform architectural-engineering work necessary to the construction of the System.

8. It is agreed that the City County or the beneficiaries of the trust will promptly take the required action to obtain a determination by the Supreme Court of the State of Nevada as to the constitutionality of Senate Bill No. 607, the validity and legality of the creation of the trust, the contracts entered into or proposed to be entered into between the trustees and others, the proposed method of financing the project and of all other matters necessary for the sale of revenue bonds to be issued by the trustees for the financing and construction of the project.

9. It is understood by the parties that said Senate Bill No. 607 provides that the State Board of Finance shall first review and approve the method of finance proposed by any trust created under said Act and shall approve the underwriters or financial institution preparing and offering a proposed bond issue for sale, as to the financial responsibility of such underwriter or financial³⁸⁸

institution, before such issue may be offered or sold. Said Act further provides that certified copies of the trust documents or prepared trust documents, together with a detailed explanation of the purpose, scope, area to be affected and other pertinent information shall be submitted to the Public Service Commission to assist the Commission in making a determination as to whether the service presently being offered by any existing transportation company or public utility would be unreasonably impaired by the approval of the trust documents and that such trust shall not become effective unless and until written approval has been given by the Commission. The parties hereto agree to cooperate in the preparation and submission of documents and information necessary to satisfy such requirements of the Act.

10. Contractors and their associates have and will be required to incur very substantial costs and expenses in connection with the preliminary planning, engineering, surveys, and studies ('preliminary work') necessary to a determination of the feasibility of the project. In the event that for any reason the City County or a public trust to be created as contemplated hereunder does not enter into a definitive contract with Contractors to construct and operate the facility, or if the City County or such trust should contract with others for the construction and operation of such facility within a period of five (5) years from this date, none of the plans, designs, drawings, specifications, surveys, studies, information or other materials furnished hereunder by Contractors or their associates shall be used unless and until all of the reasonable and necessary costs and expenses incurred for all of

such "preliminary work" shall have been reimbursed to Contractors and their associates.

11. All preliminary work furnished by contractors, as mentioned in paragraph 1 hereof shall be made available for inspection, review and analysis by authorized representatives of the City and County and the trust agreement creating the public trust shall provide that no bonds can be sold to provide financing and no contract for construction or for operation of the System or any portion thereof, shall be entered into by the Trustees of such public trust without the prior approval of the City and County. Approval by the City of the bonds and contracts shall not be required however, in the event such contracts should not provide for any portion of the System to be constructed or operated within the corporate boundaries of the City.

12. The City and the County jointly and separately agrees to cooperate fully and to give such assistance to the project as may be legally given, regardless as to whether the City, County, State or any combination thereof shall be the beneficiary or beneficiaries of the trust that is created to undertake the project.

13. The addresses to which any notice permitted or required hereunder shall be delivered, unless otherwise changed by written notice, shall be as follows:

The City of Las Vegas
City Hall
Las Vegas, Nevada

The County Commission of
Clark County, Nevada
County Courthouse
Las Vegas, Nevada

Custom Cabs, Inc.

Las Vegas, Nevada

A.J. Kavanaugh and Associates, Inc.
3217 N.W. 63rd Street

14. This Agreement shall become effective when executed by the Contractors and either the City or the County, and in the event of its execution by either the City or the County and not by the other, all of the terms and provisions shall apply except that the route to be served by the System shall be limited, if necessary, to rights of way that can be granted by the contracting public body or obtained by it and any references herein to City County shall mean only the contracting public body.

15. The covenants and agreements contained herein shall extend to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

THE CITY OF LAS VEGAS, NEVADA

BY Oran R. Heagson
Mayor

ATTEST:

Oran R. Heagson
City Clerk

COUNTY COMMISSION OF CLARK COUNTY,
NEVADA

BY James D. Ryan
County Commissi

BY James D. Ryan
County Commissi

BY James D. Ryan
County Commissi

ATTEST:

Loette Lowman
County Clerk

CUSTOM CABS, INC.

BY Arthur Olsen
Vice-President

ATTEST:

James H. Bellamy
Secretary

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A. J. KAVANAUGH AND ASSOCIATES, INC.
a corporation

BY *A. J. Kavanaugh* President

ATTEST:

Julia Kavanaugh
Secretary

26 March 1973

TO: Senator James Gibson, Chairman
Committee on Federal, State, and Local Governments
Nevada State Senate, Carson City, NV

FROM: G. Angus and Janet MacEachern
1300 Denver Street, Boulder City, NV 89005

re: SB 418 - Proposal to amend provisions concerning trusts for public functions.

Dear Senator Gibson and Members of your Committee:

We were concerned two years ago when, in the closing days of the session, SB 607 was enacted into law and made trusts for public functions possible. It is still difficult to understand how this could be defeated one day and passed with only four dissenting votes upon reconsideration the following day. Though the Supreme Court (State) found this act constitutional in its concept, we believe there are loopholes in the law which must be closed.

We think the public trust, as defined in the present law, should be subject to the provisions of the Securities Laws which require competitive bidding before issuing debt obligations and it should comply with the State's competitive bidding laws.

It seems also proper to us that the trust should come under the jurisdiction of the FSC when engaged in a public utility, and it should be limited to those projects which can be defined as proper governmental functions--mass transportation or solid waste disposal, for instance. This would help alleviate future difficulties in case the beneficiary had to take over the entire operation.

The amendment setting terms of office for the trustees provides an opportunity for a periodic check on their trusteeship.

Just a cursory reading in the newspapers of some of the provisions in the present Monorail contract in Clark County indicates to us that the public trust law needs tightening.

Though Jan was assured by local officials that the use of the Public Trust Law would have no deleterious effect on the credit of the County in case of failure, whether that credit was used for the Monorail or as a vehicle for the purchase of tax-free bonds for Flintkote's installation of pollution control equipment, the fact remains that our "full-faith-and-credit" is being used and we want to be sure that those who use it are subject to rigorous controls.

We would prefer repeal of the act, but if we must live with it, the passage of SB 418 will, in our lay opinion, provide some protective devices for us who, in the final analysis, pay the bill for failure.

The record shows that the four Senators who voted against SB 607 upon final reconsideration in 1971 are on this F/S/LG Committee. We hope you agree with us that the proposals in SB 418 are valid. Any further plugging of loopholes you can devise which would remove possible pitfalls such as collusion or fiscal irresponsibility will be appreciated.

Thank you very much hearing us.

Exhibit "E"