Present — Chairman Gibson
Vice Chairman Keith Ashworth
Senator Dodge
Senator Echols
Senator Ford
Senator Kosinski
Senator Raggio

Also Present: — See Attached Guest Register

Chairman Gibson called the thirty-third meeting of the Government Affairs Committee to order at 2:30 p.m. with all members present.

The Chairman informed the committee that Mr. Renny Ashelman did not feel that SB-431 would impose upon their pending lawsuit with Las Vegas Valley Water District. Mr. Ashelman requested that the bill be held until he could look into its effect on the lawsuit.

Senator Kosinski suggested an amendment to the bill in the meeting on April 16th. (See Attachment #1 for the language)

Senator Keith Ashworth moved "Amend & Do Pass" on SB-431 - Seconded by Senator Ford
Motion carried with one no vote cast by Senator Raggio

SB-444 — Requires that election results indicate number of votes each candidate received in each precinct.

Senator Ford testified to the committee on the benefits of the bill and noted that it addressed the section of the law that pertains to votes being accumulated by precinct. The Senator stated that on page 2, line 23 the language provides for a list being compiled and indicating total votes. This portion of the statutes should be clarified. This does not cover the municipal elections, only the regular and primary elections.

David Howard, representing the Secretary of State's office, testified to the fiscal impact. Mr. Howard felt that it would mean the costs would be tripled so that each precinct could be handled by a separate individual. Mr. Howard stated that the precincts were combined in order to save the counties some money. Mr. Howard gave an example of how the cost factor would work in one area in Sparks. He concluded by stating that the disadvantages, in his opinion, far outweighed the advantages.

Mr. George Ullom, Clark County Registrar of Voters, testified to the cost factor and concurred with testimony given by Mr. Howard. Mr. Ullom also gave examples of how this bill would affect Clark County.

Russ McDonald, Representing himself, addressed the bill as it might apply to city elections. Noted that 266.632 applies to general law and would affect only Fallon, Lovelock, Winnemucca and Ely. These cities use this portion of the law with regard to their election procedures. This example was used to illustrate that the bill will not only affect Washoe and Clark counties. Russ McDonald read a letter to the committee from Anne Rollins, Washoe County Registrar. (See Attachment #2)

Senator Ford asked those present if the bill would be more acceptable if it were amended to include the primary and general election and leave out the absent and mailing precincts.

The committee discussed the mailing precincts at length and Senator Kosinski was concerned about the size of the mailing precincts in Washoe County.

Senator Ford moved "Amend and Do Pass" on SB-444
Seconded by Senator Raggio
Motion carried unanimously.

The amendments were to include the primary and general elections in even numbered years and exempt the absent and mailing precincts. Chairman Gibson stated that he would hold the bill until Russ McDonald could check with the Washoe County Registrar and find out why the mailing districts were so large.

SB-445 Amends election laws to facilitate voter registration.

Claude Evans, representing the A.F.L.C.I.O, testified in favor of this bill and presented the committee with a copy of a study conducted by the Ford Foundation on Post Card Registration. (See Attachment #3) Mr. Evans pointed out that less than 50% of the eligible voters participated in the last election. The post card registration process has been successful in Minnesota and helps those who find it very difficult to get to the polls in time to vote.

Mr. Mark T. Massagli, representing Nevada State A.F.L.C.I.O, testified in favor of this bill and concurred with testimony given by Mr. Evans. Mr. Massagli felt that the means of voting should be made more accessible to every voter who wishes to be a part of the democratic system.

David Howard, representing himself, testified from his own personal viewpoint and wanted the records to reflect that he was not speaking on behalf of the Secretary of State. Mr. Howard did some studies on those states using the post card registration system and noted that Ohio and Washington state repealed the post card registration and same day registration system. He noted that Oregon has been

using the post card registration system for ten years and they are finally making it work. Mr. Howard indicated that he read a study on the post card system conducted by Mr. Richard Smoka. Mr. Smoka's study was on the post card registration system used in Maryland and New Jersey. He felt that the Smoka report and the one prepared by the Ford Foundation conflicted. Mr. Howard concluded by stating that in Sparks it was discovered that post card registration people did not vote on the same day of the election (62% of the people who had been registered to vote at a place other than the registrar's office did not vote) and many did not vote at all. If the system is made too easy many will not vote.

Russ McDonald, again read a letter to the committee from Anne Rollins, Registrar of Voters in Washoe County. (See Attachment #4) Mr. McDonald concluded by reiterating Mrs. Rollins concern that if the bill is passed there should be some procedural changes in the statutes to correspond post card registration with.

Mr. George Ullom, Clark County Registrar of Voters, concurred with the letter written by Mrs. Rollins and felt that additional staff would have to be hired to handle the added responsibilites. Mr. Ullom was also concerned about the fiscal impact on their present budget allocations.

Patty Caffarata, testifying for herself, felt that the system works well now. There is great concern for helping those who are unable to get to the polls. There are car pools and the news media broadcasts the numbers to call if anyone needs a ride to the polls. Mrs. Caffarata was against this bill and felt that the system was most adequate and those who wanted to vote would make the effort to vote.

Senator Raggio moved "Indefinite Postponement" on SB-445 - Seconded by Senator Echols
Motion carried unanimously.

SB-463 Establishes procedures for placing public utilities and general improvement districts into receivership for inadequate service.

Chairman Gibson stated that this bill was introduced by the committee on Commerce and Labor.

Heber Hardy, Chairman of the Public Service Commission presented the committee with some amendment suggestions and read same to committee. (See Attachment #5). Mr. Hardy was very concerned about not having the authority to appoint a receiver when a utility is not providing adequate service. The amendments were provided in order to give that authority.

Debra Sheltra, President of the Virginia Foothills property owners, testified to the committee that this authority is desperately needed.

Mrs. Sheltra felt that their basic interest was in water and sewage treatment. Another concern expressed by Mrs. Sheltra was the possible conflict between the public utility and the Public Service Commission. Since the Public Service Commission approves the utility it might be difficult for them to turn around and appoint a receiver. Mrs. Sheltra is in favor of the bill as it is a beginning and better than what they are operating under at the present time.

Bob Hatfield, Douglas County Manager, testified in support of the bill and the proposed amendments as suggested by Mr. Hardy. Concurred with testimony given by Mrs. Sheltra and noted the problems that Douglas County is having with public utilities.

Stan Warren, representing Nevada Bell, testified in favor of the bill and concurred with Mr. Hardy's testimony. Mr. Warren indicated that the telephone company has had difficulties with public utilities from time to time and is glad to see such authority in the statutes.

Chuck King, representing Central Telephone Company, concurred with Mr. Warren and supports the bill with the proposed amendments.

Senator Keith Ashworth moved "Amend & Do Pass" for SB-463 - Seconded by Senator Echols
Motion carried unanimously.

The amendments are noted in attachment #5.

AB-581 Removes limit on number of hours person may work pursuant to public works contract.

Allen Bruce, representing Associated General Contractors of Southern Nevada. Noted that this bill repeals NRS 338.110. The Chapter is inadequate in today's world and found it by accident. He also stated that the Labor Commission is not in opposition to the bill.

Senator Ford moved "Do Pass" on AB-581
Seconded by Senator Echols
Motion carried unanimously.

AB-627 Repeals partial designation of western boundary of Nevada.

Jim Thompson, Special Deputy in the Attorney General's office. Mr. Thompson handed out copies of the disputed boundary and noted the partial western boundary that should not be recognized on the books. Noted that California repealed theirs last year. (See Attachment #6)

Senator Raggio moved "Do Pass" on AB-627
Seconded by Senator Keith Ashworth
Motion carried unanimously.

AJR-24 Proposes constitutional amendment to conform constitutional state boundary to actual boundary.

Mr. Thompson from the Attorney General's office testified on this bill as well and noted this bill merely corrects the boundary points.

Senator Raggio moved "Do Pass" on AJR-24
Seconded by Senator Keith Ashworth
Motion carried unanimously.

Chairman Gibson referred the committee to SB-120 and asked Senator Dodge to go over the amendments prepared by the sub-committee.

Senator Dodge went over the amendments for the committee and referred the committee to the language on the tentative map that would be filed. He noted that the Planning Commission has sixty days to make any specifications on the final map and the County has forty-five days to approve the final map.

The Senator concluded that it was their opinion that the amended version of the bill is acceptable to most of the entities involved but read a letter from Gil Buck who represented the Division of Realtors to reflect opposition for the bill. (See Attachment #7)

Senator Ford had some questions on the amendments as suggested by the sub-committee. Ms. Ford noted that she was unable to attend the last meeting of the sub-committee and would have cleared this up at that meeting. (1) Page 4, line 13 - should be (c) not (b) - (b) does not make reference to the proper sub-section. (2) Page 7, line 23, stated "of access" originally and the amended version of the bill has deleted this reference.

Senator Dodge responded that "of access" was unnecessary language and was deleted due to that reason.

Senator Ford continued by stating (3) that on page 7, line 47, the language after "proposed" should be deleted. (4) Page 8, lines 31 and 35 and also on Page 9 in subsection A, there is no language for requiring the place for the final map to be filed. There are also no requirements for the lots.

Mr. Hoy felt that this was an oversight and should be placed in the bill. They would have no difficulties with these amendments.

Senator Ford continued; (5) Page 9, line 44 should contain some language to include the special districts.

The committee agreed upon the following language for page 9, line 44, "city, county, school and special district.

> Senator Keith Ashworth moved, "Amend and Do Pass" on SB-120 - Seconded by Senator Dodge Motion carried. Senator Echols abstained from voting due to a possible conflict of interest.

Chairman Gibson referred the committee to SB-253 and SB-254 for a work session. Attachment #8 was provided for review.

SB-253 Adapts County Economic Development Revenue Bond Law to certain projects for generating and transmitting electricity,

SB-254 Provides for payment in lieu of taxes on certain power projects.

In reviewing Attachment #8, Senator Kosinski asked Mr. Hagen the basis for the 12 years (line 27 (i). Mr. Hagen responded that the 12 years is the estimate of the number of years it will take to replace the energy. Bond counsel approved this figure after consulting with experts in this area.

Senator Dodge was concerned about the rating the Nevada utilities must obtain in order to recapture power and energy. The Senator felt that it was not realistic.

Benney Mikkel, representing Dean Witter, stated that there were two kinds of problems with not having this kind of provision in the statutes. The initial rating of the bonds by Poor's or Moody's are aware that there could be a lesser credit somewhere down the line and they will rate the bonds accordingly. Also, if a lesser credit came in, somewhere down the line, it would probably rewrite the bonds.

The committee discussed the proposed amendments to SB-253 and Chairman Gibson stated that there is a great need for a power project and felt that SB-253 should be processed. The committee and Chairman voiced concern on SB-254.

Mr. Joe Gremban, Sierra Pacific Power Company, provided some information to the committee and stated that they did not agree with the rating structure in Attachment #8. (See Attachment #9)

Chairman Gibson stated that the committee would set another meeting to discuss the problems in SB-253 and SB-254 and try to work out a compromise that would suit all concerns, especially the State of Nevada.

With no further business the meeting was adjourned at 6:40 p.m.

Respectfully submitted,

Janice M. Peck - Corresponding Secretary
Lois Smith - Back-up Secretary

Approved:

Chairman
Senator James I. Gibson

WASHOE COUNTY

"To Protect and To Serve"

OFFICE OF
REGISTRAR OF VOTERS
ANN ROLLINS, Registrar

WASHOE COUNTY COURTHOUSE
POST OFFICE BOX 11130
RENO, NEVADA 89520
PHONE: (702) 785-4194

April 16, 1979

Senator James I. Gibson, Chairman
Senate Committee on Government Affairs
Legislative Building
Carson City, Nevada 89710

Re: S.B. 444

Dear Senator Gibson:

The contents of the subject bill require that election results indicate the number of votes for each candidate or question in each precinct. By and large, Washoe County already follows this procedure with its computer program. However, because of space, staff and procedural problems, mailing precinct ballots and absent ballots are voted in this office in specially numbered districts which are designated by ballot style. For instance, in the 1978 general election, Washoe County had 30 ballot styles. This required 30 separate drop or ballot boxes for deposit of the appropriate mailing precinct or absent ballots.

To comply with the provisions of the bill as I read it, it would be necessary for Washoe County to provide 280 drop or ballot boxes to accommodate absent and mailing precinct ballots, this being the number of precincts in Washoe County. There are 50 mailing precincts alone within this number.

It becomes obvious that both space limitations and a lack of staff would prevent the extremely complicated book- and recordkeeping engendered in depositing individual ballots in 280 slots. Although I readily agree that more accurate statistical information would be generated by the use of this system, mechanically this requirement is totally unfeasible.

Another strong objection to the requirement in the bill comes from the fact that both NRS 293.215B and 293.145 allow Registrars of Voters to combine precincts into districts at

EXHIBIT 2 804

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Presidential Preference Primary and other elections as public convenience, necessity and economy may require. The key word here is economy. It is obvious that combining precincts into districts materially cuts election costs; and particularly in municipal, special and Presidential Preference Primary elections it is absolutely unnecessary to hire an election board for each individual precinct in the county.

I would urge that, if this bill is to be passed, it be amended to except absent and mailing precinct ballots from the requirement that votes be counted by precinct. I would also urge that districting options be retained for the overriding reason of economy.

Sincerely,

Ann Rollins

(Mrs.) Ann Rollins
Registrar of Voters

AR:rp
cc: R. W. McDonald, Esq.
Mr. David L. Howard
Commissioner Bill Farr
Mr. John A. MacIntyre

EXHIBIT 2

S.B. 445

SUMMARY OF FORD FOUNDATION REPORT
ON POST CARD REGISTRATION
IN MARYLAND AND MINNESOTA

In March of this year, the Ford Foundation released a study of the new post card voter registration systems utilized in Maryland and Minnesota in 1974. This report provides excellent documentation of the benefits of post card registration:

1. Post card registration reduced costs one-half to one-third the costs of the previous registration systems used in these states. The average reduction went from $1.54 per registration in 1972 to $1.09 per registration in 1974.

2. Post card registration did not produce an increase in fraud, and in fact decreased the possibility of fraud by providing a non-forwardable voter notification card sent to the applicant to confirm his registration status.

   The post office returned only 0.3 percent of these voter notification forms, none of them being due to deliberate fraud, with the single exception of a 17-year-old male who lied about his age in order to use the voter notification form for purchasing liquor in bars.

3. Post card registration eased administrative procedures.

   - Legibility of post card voter applications was better than that experienced in the deputy registrar system.

   - Frivolous applications were almost non-existent in most areas and reached a level of only 0.8 percent in Baltimore City where a pre-paid form was used.

   - Incomplete applications or suspicious applications held for further information totaled only 3.9 percent of the returns. Most of these turned out to be duplicates and were ultimately registered.

   - Rejected applications totaled only 2.7 percent of those processed. Most of these belonged to voters in neighboring counties in Maryland who mistakenly thought they could register by mail.

   - Last minute registrations were significantly reduced, because the mailed-in forms were received earlier and over a longer period of time than forms filled out in person.

   - Better purging procedures were instituted through use of the transfer portion of the post card form.

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4. Post card registration increased voter participation.

In Maryland, 73.6 percent of the new registrations in 1974 came from counties with post card registration, even though these counties account for only 57 percent of the voting population.

Black and low income neighborhoods made significant use of the post card forms.

In 1974 the percent of voter registered fell 6.1 percent in the nation as a whole, but only 4.8 percent in areas using post card registration.

NOTE: A dual system of registration was maintained in Minnesota. The new system of post cards and election day registration was instituted without terminating the old system of registering in person before city clerks at the elections office and at special branch locations. Costs could have been reduced even more had the old system been eliminated, the report states.

According to the report, the overwhelming majority of new registrants used the new system, the bulk of them (57%) preferring to sign up on election day, the most convenient of the alternatives available. Furthermore, the proportion of new registrants using the "old" system (34%) was overestimated, due to the fact that only those forms mailed in individually were counted as "post card registrations" while those forms which were hand delivered in bulk to the elections office by registration organizations were counted as "office registrations." Officials at the Minneapolis Voter Registration Bureau supplied statistics showing that 73% of these "office registrations" were actually post card forms gathered by organizations and delivered in bulk to the office. Using these figures, it appears that only 9% of the new registrants in Minnesota's 1974 elections used the old system of appearing in person before a city clerk, while 34% sent in the post card form either directly or through an organized group, while the remaining 57% registered on primary or general election day.

5. Distribution of registration forms differed from place to place, but nowhere were they mailed out to households. One can safely assume that mailing pre-paid post card forms to every household would increase registration significantly.

In place of mailing, post card forms were distributed at election offices, at libraries and public buildings, and by organized groups.

In two Maryland counties where records were kept, it was found that post card applications distributed by groups reached the most voters:

Method of distribution	Percent of applications received
By groups and individuals	39.8 %
Libraries and public bldgs	21.7 %
Election office (including phone answering service)	38.5 %

The report gives credit to COPE for being the most active group distributing application forms in St. Paul:

> "In St. Paul, it seemed that the St. Paul Trade and Labor Assembly, the Committee on Political Education (COPE) was the most involved in encouraging registration. They did not have registration drives but made the registration cards available to their members at the Labor Temple and publicized the registration process in their newspaper, the Union Advocate." p.77

In summation, the Ford Foundation report refutes all of the arguments commonly made against post-card registration - that it is too costly, that it invites fraud, that it will create an "administrative nightmare." In fact, the post card registration systems now operating in Maryland and Minnesota do just the opposite.

WASHOE COUNTY

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PHONE: (702) 785-4194

April 17, 1979

Senator James I. Gibson, Chairman
Senate Committee on Government Affairs
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Re: S.B. 445

Dear Senator Gibson:

Rather than write a lengthy dissertation on the problems as I see them inherent in the subject bill, I believe a more effective approach to inform the Committee on Government Affairs is to list specifically the expenses which would immediately accrue to Washoe County if the provisions of this bill were to be implemented.

1980 Statistics (Projected)--		
Estimated population--Washoe County	210,000	
Voter potential--Washoe County	172,000	
Probable registration (47%)	80,000	
Costs--		
Sec. 17--Registration locations (one location each 30,000 residents 210,000 ÷ 30,000 = 7 locations)		
Courthouse + 6 location rentals	$21,000	
Location staffing--6 Clerks full-time	69,264	
--Furniture	1,981	
--Telephones	1,344	$ 93,589
Sec. 20--Registration cards		
250,000 registration cards @ 10¢ each	25,000	
Initial mail-out postage (52,000)	7,800	
Rejection notice postage	1,548	34,348
Sec. 35--Canvass		
280 precincts @ $25 each	7,000	
90,000 maximum unregistered voters @ 25¢ each	22,500	29,500
Deputies (150)		
Training	350	
Precinct finders and materials	8,750	9

Costs (cont'd.)--

Processing 80,000 registrations at 15 minutes time for each = 6 clerks for 416 working days or 12 clerks for 208 working days. In the event this bill were to pass and become effective on July 1, 1979, 8 months or 160 working days would be required in which to complete the changeover prior to the Presidential Preference Primary in May 1980.

Activity schedule would include:
- Processing returned cards
- Map checking
- Encoding and proofing
- Filing
- Microfilming

Personnel requirement: 6 additional Clerks	$69,264	
224 Binders, original and duplicate	3,427	
Postage--52,000 cards @ 15¢ each	7,800	
Microfilming	640	81,131
TOTAL PROJECTED COST, FIRST 8 MONTHS		$247,668

The above figures are based upon the theory, despite the fact that the bill is silent on some procedural aspects, that a wholesale cancellation of current registered voters would be required and an immediate reregistration by postcard would follow. This seems the only feasible means to integrate the two kinds of recordkeeping and to assure that voters are not penalized during the transition period.

There are various portions of the bill which should be clarified by amendment if it is passed, to include such specific information as the length of time and hours when registration locations are required to be kept open, the provision of a deadline for receipt of postcards after close of registration (postmarked?, dated by sender?, received in Registrar's office?), specific direction as to whether a mass cancellation is required, et cetera.

Without going further into the mechanics of the bill, I feel it imperative to mention that a postcard registration system does invite fraud. Nevada's current system is an excellent one in that original Affidavits of Registration which are made under oath and the signatures on which are witnessed by Deputy Registrars are at the polls on election day for purposes of comparison when a voter affixes his signature to the election roster. No such insurance is possible with a postcard system since any person can sign any name to a card and be registered. In states with postcard registration there are on record numerous cases of Abraham Lincolns, George Washingtons and favorite household pets having been registered.

National statistics do not seem to indicate any great surge in voter participation in those states which have postcard registration. There has been a rise in some instances, while in others an actual decline. I do not believe results shown during the last several years in states instituting postcard registration systems warrant changing Nevada's already smooth-running and satisfactory system at such large expense as the new program would involve. Using the nebulous figures above, if Washoe County's initial cost is 200 to 250 thousand dollars, Clark County's initial cost must be at lease a half-million, with the smaller counties falling in behind.

Sincerely,

Ann Rollins

(Mrs.) Ann Rollins
Registrar of Voters

AR:rp ✓
cc: R. W. McDonald, Esq.
Mr. David L. Howard
Mr. Ed Schorrs
Commissioner Bill Farr
Mr. John A. MacIntyre

Sec. 2. Chapter 704 of NRS is hereby amended by adding thereto the provisions set forth as section 3 of this act.

Sec. 3. 1. If the commission determines that a public utility:

(a) Is unable to provide reasonably continuous and adequate service; or

(b) Otherwise qualifies for appointment of a receiver pursuant to NRS 32.010,

the commission may file a petition for the appointment of a receiver for the public utility in the district court for the county in which the principal office of the utility is located within the state of Nevada, or in the district court for Carson City if the principal office of the utility is located outside the state of Nevada, to insure the public interest in receiving service from the public utility in the manner required by law.

2. The district court in which the petition is filed pursuant to subsection 1 shall immediately appoint a receiver qualified to manage the type of public utility for which the petition was filed if it finds the determination of the commission to be correct.

3. Any person so appointed receiver is, from the time of his appointment until his termination pursuant to law, subject to all duties and has all power generally conferred upon a receiver by law.

Sec. 4. NRS 704.681 is hereby amended to read as follows:

704.681 1. The board of county commissioners of any county may regulate by ordinance any person or firm furnishing a water supply or sewer services for compensation to persons within such county except those persons or firms regulated by the commission, the services furnished to its residents by a political subdivision, and services furnished to its members by a nonprofit association in which the rights and interests of all its members are equal.

2. Any person who is a customer of an entity subject to regulation by the board of county commissioners as provided in subsection 1 may request the board to review that entity, the service it is providing and the manner in which it is providing the service to determine whether a receiver should be appointed for that entity. If the board determines it to be appropriate, it shall file a petition for the appointment of a receiver for that entity in the same manner and with the same duties and powers as a receiver appointed upon petition of the commission for a public utility as provided in section 3 of this act.

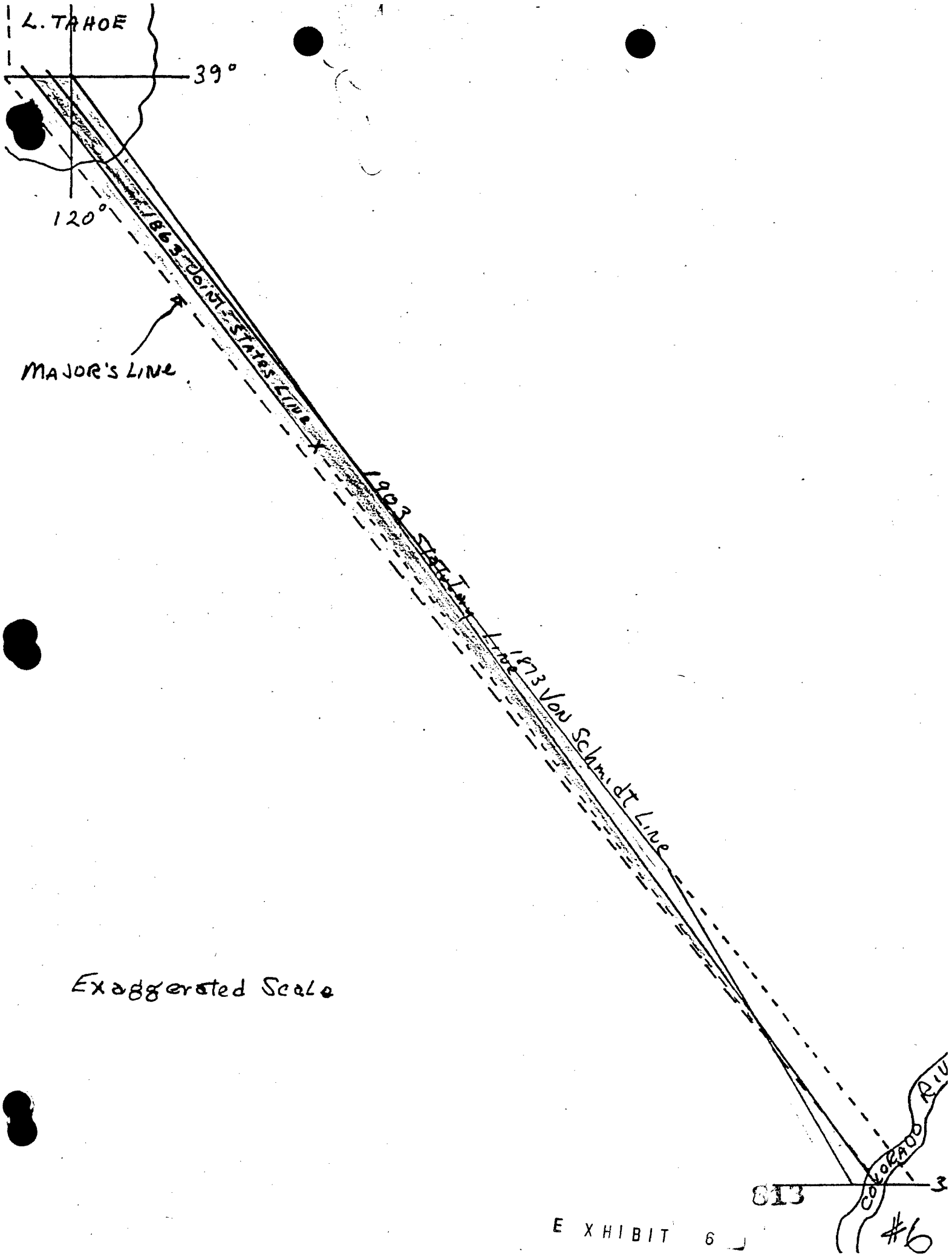
L. TAHOE
39°
120°
1863 Dept. States Line
MAJOR'S LINE
1903 State Line
1873 Von Schmidt Line
Exaggerated Scale
COLORADO RIV
813
3

EXHIBIT 6

#6

NEVADA ASSOCIATION OF REALTORS®

REALTOR®

William E. Cozart
Executive Vice President
Director of Education

1135 TERMINAL WAY, SUITE 201 / POST OFFICE BOX 7338 / RENO, NEVADA 89510 / (702) 329-6648

April 17, 1979

Senator Carl Dodge
Sub-Committee Chairman- S.B. 120
Committee on Government Affairs
Carson City, Nevada 89701

Dear Senator Dodge:

The amendments to S.B. 120 as proposed make almost every split of every piece of property in Nevada subject to control by one or more governmental agencies. The burden of time and money required by this bill on the already over-burdened and over-regulated property owner is one more thrust into the hearts of free-enterprizing, pioneering Nevadans.

It seems incomprehensible to adopt no-growth legislation in a state with only 13% of its area not Federally owned or controlled. After four years of study and work, the Clark County Board of County Commissioners recently passed an ordinance (you have a copy) regarding the splitting of property that will be destroyed by the proposed S.B. 120 as amended.

We respectfully request that S.B. 120 and its broad ramifications be reconsidered.

Respectfully submitted,

Gil Buck

Gilbert D. Buck
NEVADA ASSOCIATION OF REALTORS
Legislative Committee Chairman

cc: Senate Government Affairs Committee

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EXHIBIT 7 #7

NEW SECTION TO BE ADDED TO S.B. 253
RELATING TO RECAPTURE

Sec. 1. A county which, pursuant to NRS 244.9191 to 244.9219, inclusive, owns and has financed a project for the generation and transmission of electricity, and which has initially sold power and energy to one or more out-of-state entities in an aggregate amount which is in excess of 50% of the power and energy of the project, shall, if required by the Public Service Commission in its proceedings granting a construction permit for such Project pursuant to NRS 704.820 to 704.900, provide in the power sales contracts with such entities provided for such sale, that the amount of such excess, or any portion thereof, shall be available for recapture and use by the Nevada utility or utilities, if any, which have initially purchased power and energy from the Project under long term power sales contracts. Such recapture shall be made subject to, and such power sales contract shall provide for, the following terms and conditions:

1) any recapture of all or a portion of such excess by a Nevada utility shall be made from each such out-of-state entity in the proportion that such entity's then current entitlement to power and energy from the Project bears to the total current entitlement to power energy from the Project of all out-of-state entities under their power sales contracts;

2) such recapture by any Nevada utility shall take place either (i) twelve years after written notice has been given by such Nevada utility to the out-of-state entities it intends to exercise its right of recapture for an amount of power and energy specified in such notice, if

#8

EXHIBIT 8

such notice is given after the date of commercial operation of the first generating unit of the Project, or (ii) twelve years after such date of commercial operation if such a notice is given prior to such date, and, in either case, only if such written notice shall be accompanied by an agreement by such Nevada utility obligating it to recapture such power and energy in accordance with the terms and conditions hereof;

EXHIBIT 8

3) the right of recapture may be exercised by only a Nevada utility which has a credit rating assigned by Standard and Poor's Corporation or Moody's Investor Service, Inc. in effect at the time of such recapture equal to or higher than the highest such credit rating of any of the out-of-state entities;

4) upon the exercise of a right of recapture, each out-of-state ~~utility~~ ENTITY shall be paid by such Nevada utility, for the amount of power and energy recaptured from it, an amount equal to the product obtained by multiplying (A) the fraction obtained by dividing the amount of power and energy so recaptured from such entity by the total power and energy of the Project by (B) the amount determined by subtracting from the replacement cost of the generating plant at the time of recapture (i) accumulated depreciation and (ii) the product obtained by multiplying the aforesaid fraction by the outstanding and unpaid principal amount of bonds issued to finance the costs of acquiring, improving and equipping the Project;

5) on or before the giving of the notice specified in 2) above, the Nevada utility and the County shall have entered into an appropriate amendment to its power sales contract, such amendment to take effect upon such recapture, to increase (i) the amount of the power and energy to be taken by such utility by the amount of power and energy to be so recaptured and (ii) the payments to be made by such utility thereunder by an amount sufficient to provide for the payment of all costs, including, without limitation, operation, maintenance and debt service costs, associated with such recaptured power and energy. Upon

EXHIBIT 8

any such recapture, the power sales contracts between the out-of-state entities and the County shall be deemed amended to reduce (i) the amount of power and energy to be taken by such entity by the amount recaptured from it and (ii) the costs payable by such entity by the costs, including, without limitation, operation, maintenance and debt service costs, associated with the recaptured power and energy.

2. The County and such Nevada utilities and out-of-state entities may provide by contract for such other matters relating to such recapture as they deem necessary or desirable to protect their respective interests.

3. No right to recapture power and energy shall exist at any time by virtue of this section, and now power and energy shall be recaptured at any time pursuant to this section or by contract, if and to the extent that, under the Internal Revenue Code and regulations thereunder, as in existence at such time, such recapture would or could result in a change in or loss of the exemption from federal income tax for the interest paid, or to be paid, on any bonds issued or to be issued by the County to finance all or a portion of the costs of acquiring, improving or equipping the Project.

EXHIBIT 8

CLARIFICATION - Lack of Nevada Public Service Commission jurisdiction of intra-state sales from a county-owned facility.

In The City of Colton v. California Edison Co. (pg 12), the facts were that Edison was interconnected with out-of-state utilities and occasionally received delivery of power produced outside of California.

In Federal Power Commission v. Florida Power & Light Co. (pg 2) indicates that even a rare occasional interstate flow suffices to constitute a strictly local sale as one made in interstate commerce.

The White Pine Project would be interconnected by transmission lines to the Nevada Power system, Los Angeles Department of Water and Power system and the Sierra Pacific Power system. All three of these systems are further connected, through a grid, with other states and other systems. Thus, based on demands from systems throughout the west, power flows from the White Pine Project may be going to systems other than the system participating in the project. For example, when Sierra currently orders energy from Utah, a portion of it may flow directly from Utah to Reno and a portion will come into the system over the Pacific Gas and Electric transmission lines from California. Because of this transmission grid, with energy flows occurring in many directions through other states and utility systems, sales from the White Pine Project would be considered interstate sales not subject to the jurisdiction of the Nevada Public Service Commission.

EXHIBIT 8

LAW OFFICES
GOLDBERG, FIELDMAN & LETHAM, P. C.
1700 PENNSYLVANIA AVENUE, N. W.
WASHINGTON, D. C. 20006

(202) 393-[illegible]

REUBEN GOLDBERG
ARNOLD FIELDMAN
GLENN W. LETHAM
PAUL M. HARRINGTON
CHANNING D. STROTHER, JR.*

OF COUNSEL
DAVID C. HUFFMEYER
FORT COLLINS, COLORADO

*NOT ADMITTED

April 11, 1979

VIA TELECOPIER

John Madariaga, Esq.
Sierra Pacific Power Company
(702) 789-4011

Dear Mr. Madariaga:

The question you pose to us involves the following fact situation: White Pine County, Nevada, intends to construct an electric generating plant. The intent of the County is to make power sales for resale to certain wholesale customers within the state of Nevada as well as to at least one out-of-state wholesale customer. The plant will be connected with out-of-state utility operations in such manner that it will be impossible to trace the flow of power to ascertain whether any energy produced outside of Nevada is ultimately sold by the County for resale.

The question is whether any federal or state regulatory agency will have jurisdiction over the rates at which the County makes sales for resale to Nevada wholesale customers.

The answer is that no federal or state body will have ratemaking jurisdiction over such sales.

In Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 273 US 83 (1927), it was held that when an electric utility in one state sells power to a utility in another state neither of the two states can exercise ratemaking control over the transaction without running afoul of the Commerce Clause of the United States Constitution. The Supreme Court stated that only Congress could provide for ratemaking to cover the interstate arrangement. This decision was rendered prior to the enactment of the Federal Power Act. Therefore, the import of the holding was that there was at that time no federal or state agency with regulatory jurisdiction.

Attleboro was the first Supreme Court pronouncement of the rule that regulation of interstate power sales is a matter exclusively for federal control. However, the same principle had earlier been stated as to interstate wholesale sales of natural gas. Missouri v. Kansas Natural Gas Co., 265 US 298 (1924), and Pennsylvania v. West Virginia, 262 US 553 (1923). The reason for the enactment of the Federal Power Act

and the Natural Gas Act was to fill the regulatory gap opened up by the Supreme Court in these cases. See the Power Act and Gas Act legislative histories reflected in, e.g., Jersey Central Power & Light Co. v. Federal Power Commission, 319 US 61, 68-69 (1943); Phillips Petroleum Co. v. Wisconsin, 347 US 672, 684 (1954); Wisconsin-Michigan Power Co. v. Federal Power Commission, 197 F2d 472, 476 (CA 7, 1952), cert denied 345 US 934 (1943).

As above noted, Attleboro involved a sale by one utility to another located in an adjacent state. The discussion in Attleboro revolved around the term "interstate commerce," and there was no indication of any intention on the part of the Supreme Court to limit its holding to sales across state lines. In any event, the matter was laid to rest in City of Colton v. California Edison Co., 26 FPC 223 (1961), affirmed sub nom Federal Power Commission v. Southern California Edison Co., 376 US 205 (1964). In that case FPC jurisdiction over rates chargeable by a California utility on a power sale to a California municipal utility was upheld. The facts were that Edison was interconnected with out-of-state utilities and occasionally received delivery of power produced outside California. The Commission said, 26 FPC at 228-29:

> "In our opinion the sale by Edison of out-of-state energy to Colton * * * is a sale at wholesale in interstate commerce and may not be regulated by the State of California as held by authorities too numerous to cite.
>
> * * *
>
> "In our opinion the field of wholesales of electric energy in interstate commerce has been held to be outside the constitutional scope of state regulation. [citing Attleboro.] The Attleboro case does not limit the rule to cases where it can be specifically shown that other states are affected."

Nor should it be supposed that a continual entry of out-of-state energy into the selling utility's system is essential to constitute a strictly local sale as one made in interstate commerce. As was held in Federal Power Commission v. Florida Power & Light Co. 404 US 453 (1972), even a rare, occasional interstate flow suffices.

In view of the foregoing it is perfectly obvious that the Nevada Public Service Commission would not be able to exercise any ratemaking control of any sale by the County to wholesale purchasers whether or not any such purchasers are located in Nevada.

Nor would the Federal Energy Regulatory Commission (successor to the FPC) have ratemaking jurisdiction over the arrangement. It isspecifically provided in Part II of the Federal Power Act, Section 201(f)(16 USC §824(f)), as follows:

> "No provision of this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing * * *."

(The reference in this statute to "this subchapter" includes all of Part II of the Act, in which FERC (formerly FPC) ratemaking powers are reposed.)

In sum, Attleboro and other cases, only a few of which are cited herein, found a regulatory gap in state authority over interstate sales of electricity. The Federal Power Act was created to close this gap to the extent of dealing with investor utility power sales. However, the Act does not cover sales by states or their political subdivisions. Therefore, the pre-Act gap continues to exist to that extent.

There is, in short, no federal or state agency that would be capable of regulating the rates at which the County will make sales of power at wholesale to customers within the same state of Nevada if the aforementioned plan of the County is carried out.

Very truly yours,

Reuben Goldberg

RG/ca

Sierra Pacific Power Company has specifically requested Kutak, Rock & Huie, an established bond counsel, to respond to the following:

Assumptions:

(1) Sierra and a County construct a generating facility.

(2) Sierra owns and finances 33% of the facility.

(3) County owns and finances with tax exempt bonds 67% of the facility.

(4) County agrees to sell 25% of their 67% of energy generated (not ownership interest) to Sierra. (This 25% could be conditioned as recapturable.)

Question: Under such an arrangement, is the tax exempt status for financing the facility in any way impaired?

Kutak, Rock & Huie response (attached):

The tax exempt status would <u>not</u> be impaired.

The 25% of the tax exempt portion, as shown in (4) above, should be considered recapturable, thus giving Nevada utilities 50% of the capacity of the plant. (33% direct ownership plus 17% of tax exempt portion (67% x 25%) for a total of 50% with no loss of tax exemption of the County-owned portion.)

EXHIBIT 8

KUTAK ROCK & HUIE
THE OMAHA BUILDING
1650 FARNAM STREET
OMAHA, NEBRASKA 68102
(402) 346-6000

ATLANTA
1200 STANDARD FEDERAL SAVINGS BUILDING
ATLANTA, GEORGIA 30303
(404) 522-8700

DENVER
1330 COLORADO NATIONAL BUILDING
DENVER, COLORADO 80202
(303) 534-1330

MINNESOTA
4044 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
(612) 332-1440

WASHINGTON
1101 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036
(202) 828-2400

April 17, 1979

Mr. H. Joe McKibben
Vice President
Finance and Accounting
Sierra Pacific Power Company
100 East Moana Lane
Post Office Box 10100
Reno, Nevada 89510

Re: Joint Financing of Electric Generating Facilities

Dear Joe:

You have asked for our analysis of a proposed financing in which two issues of obligations are issued to construct an electric generating facility. The first issue would be the obligation of Sierra Pacific Power Company ("Sierra Pacific") and would be treated as an obligation not described in Section 103(a)(1) of the Internal Revenue Code of 1954 (the "Code"). As such, Sierra Pacific's bonds would not be tax exempt. The second issue of obligations would be issued by an entity that qualifies as a political subdivision described in Section 103(a)(1) of the Code. Sierra Pacific will utilize its full pro rata share of the power generated by the facility based on the pro rata portion of the facility financed with the taxable obligations issued by Sierra Pacific. In addition, Sierra Pacific will agree, pursuant

to a contract to take, or to take or pay for, 25 percent or less of the portion of the output of the electric generating facility attributable to the political subdivision's pro rata interest in the facility. Aside from Sierra Pacific's contract, no other nonexempt person (i.e., a person subject to federal income tax) will enter into a contract to take, or to take or pay for, the output of the political subdivision's share of the electric generating facility.

This letter reviews the requirements of Section 103(b) of the Code relating to industrial development bonds and concludes that the proposed transaction outlined above will not cause the obligations issued by the political subdivision to be industrial development bonds. If the obligations are not industrial development bonds and assuming that the other requirements of Section 103 of the Code are met, the interest on the obligations issued by the political subdivision for the construction of the electric generating facility would be tax exempt.

Section 103(a)(1) provides that gross income does not include interest on obligations of a state or a political subdivision thereof. Section 103(b)(1) provides that, with certain exceptions an "industrial development bond" is not to be treated as an obligation described in Section 103(a)(1). Section 103(b)(2) defines an "industrial development bond" as any obligation which (a) is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by a nonexempt person and (b) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) in whole or in major part is (i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or (ii) to be derived from payments of principal or interest on which (under the terms of such obligation or any underlying arrangement) in whole or in major part is (i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or (ii)

to be derived from payments in respect of property or borrowed money used or to be used in a trade or business. The portions of the definition included in clauses (a) and (b) above are popularly referred to as "tests." Clause (a) is called the "trade or business test," and clause (b) is called the "security interest test." If both the trade or business test and the security interest test are met, the bonds are industrial development bonds and the interest thereon is taxable unless certain exceptions which are not applicable to the proposed financing apply to the bonds.

Section 1.103-7(b)(5) of the Income Tax Regulations (the "Regulations") provide that the use by one or more nonexempt persons of a major portion (more than 25 percent) of the output of facilities such as electric generating facilities financed with the proceeds of an issue of obligations satisfies the trade or business test and the security interest test if such use has the effect of transfering to nonexempt persons the benefits of ownership of such facilities, and the burdens of paying the debt service on governmental obligations used directly or indirectly to finance such facilities, so as to constitute indirect use by them of more than 25 percent of the proceeds of the governmental obligations. The benefits and burdens are deemed to be transferred and a major portion of the proceeds of an issue is deemed to be used indirectly by the users of the output of an electric generating facility which is owned and operated by a public utility where--

> (1) One nonexempt person agrees pursuant to a contract to take, or to take or pay for, a major portion of the output of the electric generating facility (whether or not conditional upon the production of such output) or two or more nonexempt persons, each of which pays annually a guaranteed minimum payment exceeding three percent of the average annual debt service with respect to the obligations in question, agree, pursuant to contracts, to take or to take or pay for, a major portion of the output of the electric generating facility (whether or not conditional upon the production of such output) and

(2) Payment made or to be made with respect to such contract or contracts by such nonexempt person or persons exceeds a major portion (more than 25 percent) of the total debt service with respect to such issue of obligations.

Example 13 in Section 1.103-7(c) of the Regulations illustrates the rule with respect to output contracts. A copy of Example 13 is attached to this letter. In the Example, a city issues $50 million of its obligations and a privately owned electric utility uses $100 million of its funds to construct an electric generating facility. The city and the private utility will jointly own the facility as tenants in common. The city and the private utility will share in the ownership, output, and operating expenses of the facility in proportion to their contribution to the cost of the facility. The city agrees to sell to the private utility 25 percent of its share of the annual output of the electric generating facility pursuant to a contract under which the private utility agrees to take or pay for the power in all events. Example 13 concludes that the bonds issued by the city are not industrial development bonds since the city's interest in the facility is treated as a separate property interest and, although 25 percent of the city's interest in the annual output of the facility will be used directly or indirectly in the trade or business of the private utility, such portion constitutes less than a major portion of the output of the facility.

In conclusion, the Regulations provide that obligations issued by a political subdivision to finance a portion of the cost of constructing an electric generating facility will be tax exempt obligations if less than 25 percent of the output derived from the political subdivision's portion of the facility will be sold pursuant to take, or to take or pay for contracts with nonexempt persons. Example 13 illustrates that a private utility's interest in an electric generating facility is treated, for purposes of Section

103(b) of the Code, as a separate property interest and that if less than 25 percent of the political subdivision's share of the annual output of the facility is sold to a nonexempt persons pursuant to a contract to take or to take and pay for, such output, the interest on the obligations issued by the political subdivision will be tax exempt.

Please call if you have any questions.

Very truly yours,

Kenneth E. Iltz

slr

Attachment

EXHIBIT 8

EXAMPLE (13). In order to construct an electric generating facility of a size sufficient to take advantage of the economies of scale: (1) City H will issue $50 million of its 25-year bonds and Z (a privately owned electric utility) will use $100 million of its funds for construction of a facility they will jointly own as tenants in common. (2) Each of the participants will share in the ownership, output, and operating expenses of the facility in proportion to its contribution to the cost of the facility, that is, one-third by H and two-thirds by Z. (3) H's bonds will be secured by H's ownership in the facility and by revenues to be derived from the sale of H's share of the annual output of the facility. (4) Because H will need only 50 percent of its share of the annual output of the facility, it agrees to sell to Z 25 percent of its share of such annual output for a period of 20 years pursuant to a contract under which Z agrees to take or pay for such power in all events. The facility will begin operation, and Z will begin to receive power, 4 years after the City H obligations are issued. The contract term of the issue will, therefor, be 21 years. (5) H also agrees to sell the remaining 25 percent of its share of the annual output to numerous other private utilities under a prevailing rate schedule including demand charges. (6) No contracts will be executed obligating any person other than Z to purchase any specified amount of the power for any specified period of time and no one such person (other than Z) will pay a demand charge or other minimum payment under conditions which, under paragraph (b)(5) of this section, result in a transfer of the benefits of ownership and the burdens of paying the debt service on obligations used directly or indirectly to provide such facilities. The bonds are not industrial development bonds because H's one-third interest in the facility (financed with bond proceeds) shall be treated as a separate property interest and, although 25 percent of H's interest in the annual output of the facility will be used directly or indirectly in the trade or business of Z, a nonexempt person, under the rule of paragraph (b)(5) of this section, such portion constitutes less than a major portion of the subparagraph (5) output of the facility. If more than 25 percent of the subparagraph (5) output of the facility were to be sold to Z pursuant to the take or pay contract, the bonds would be industrial development bonds since they would be secured by H's ownership in the facility and revenues therefrom, and under the rules of paragraph (b)(5) of this section a major portion of the proceeds of the bond issue would be used in the trade or business of Z, a nonexempt person.

SENATE GOVERNMENT AFFAIRS COMMITTEE

GUEST REGISTER

DATE _____

PLEASE SIGN - EVEN IF YOU ARE NOT HERE TO TESTIFY.....

NAME	WILL YOU TESTIFY	BILL NO	REPRESENTING
George Ullom	Yes	SB 444 SB 445	Clark County
TED THORTON	YES	SB 445	CARSON CITY CLERK
Roger Chase	NO		Carson City
Robert Redfield	NO	SB 120	Douglas County
Reece Harper	?	SB 120	NEV. ASSOC of LAND SURVEYORS
CHUCK KING	—	SB 463	CEN TEL
STAN WARREN	?	SB 463	NEVADA BELL
Allan Bruce	yes	AB 581	Associated General Contractors
Patty Caffarata	yes	SB 445	
CLAUDE EVANS	YES	SB 445	AFL-CIO
MARK TULLY MASSAGLI	YES	SB 445	NEV. STATE AFL-CIO
[illegible]	?	SB 253	NEV LEAGUE of CITIES
Mike Marshall	?	SB 253	White Pine Co.