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MUNICIPAL OBLIGATIONS IN NEVADA

2-9-10

I. GENERAL CONSIDERATIONS.

A. Dillon's Rule. "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in, or incident to, the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation - not simply convenient, but indispensable." 1 Dillon, *Municipal Corporations*, 5th ed., Sec. 237, quoted in Runnow v. City of Las Vegas, 57 Nev. 332, 343; 65 P.2d 133 (1937). As Nevada has no home rule, Dillon's Rule applies to all local governments.

B. Names of Instruments.

1. "Bonds" generally are relatively long-term obligations to pay money.
2. "Notes" are generally the same as bonds but usually for a shorter term.
3. "Debentures" are unsecured obligations. For Nevada issuers, "interim debentures," a form of bond anticipation financing, are authorized under NRS 350.672.
4. "Warrants" generally are authorizations to pay money -- like a check. In the context of municipal finance in Nevada, "interim warrants" are used as construction financing for special assessment districts under NRS 271.355.
5. "Certificates of Participation" or "COP's" are evidences of a right to participate in payments made under a lease or installment purchase agreement by a municipality.

C. Finance Only Capital Improvements. In 2001, the Nevada Legislature passed NRS 354.6256 which prohibits a local government from issuing obligations to pay operating expenses except (i) the proceeds of the obligation issued to construct or acquire a facility may be used to pay operating expenses for the period estimated by the governing body to effect the project plus one year; and (ii) the proceeds of a medium-term obligation issued by a local government in severe financial emergency as determined by the Nevada Tax Commission may be used to pay operating expenses if approved by the Executive Director of the Department of Taxation.

II. CATEGORIES OF OBLIGATIONS BY SECURITY.

A. "Revenue" Obligations are obligations secured only by a designated "special" fund, which consists of monies from a designated source not derived from ad valorem taxation. Frequently revenue securities are secured by an enterprise fund's revenues (e.g., an airport revenue bond issue or a water and sewer revenue bond issue) but sometimes revenue bonds are secured by

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excise taxes -- for example, highway improvement revenue bonds issued by counties and by the state are payable from motor vehicle fuel taxes. See NRS 373.130.

B. "General Obligations" are secured by the full faith, credit and taxing power of the issuer.

1. All general obligation bonds in Nevada are "limited tax" obligations -- in most other states, general obligation bonds are payable from taxes "without limitation as to rate or amount." In Nevada, however, the maximum ad valorem tax that can be levied for all purposes by all overlapping entities is \$3.64 per \$100.00 by statute (\$5.00 per \$100.00 by constitution) and this includes levies for bonded indebtedness. See NRS 361.453 and Nev. Constitution Art. 10, Sec. 2.

2. General obligation bonds in Nevada can be "super limited" tax obligations. These would be bonds to which the full faith and credit of the entity issuing the bonds is pledged, including the entities taxing power, but for which the issuer does not have the authority to levy ad valorem tax exempt from the operating tax caps in Chapter 354 of NRS. The most frequent example of this is a medium-term obligation evidenced as a medium-term bond or note. In addition to the limitations in NRS 361.453, the limitations at NRS 354.59811, 354.59813, 354.59815, 354.598155, 354.59817 and 354.5982 typically apply to these obligations.

C. "Double Barrel" Obligations in Nevada are revenue-backed general obligation securities. These are securities to which the full faith and credit and taxing power of the issuer is pledged but the debt service on which is paid from a designated revenue source other than ad valorem taxes. While the taxing power is pledged to the bonds, usually the only time the taxing power would be used for the bonds would be in an emergency situation -- e.g., a revenue-backed general obligation water bond might be paid from taxes if the water treatment facility went out of service and consequently the municipality was unable to bill its residents for water. See NRS 350.020.

D. "Certificates of Participation," installment purchase or lease purchase are each a type of obligation that does not count as a debt that needs to be voted as long as the municipality's obligation to make payment of the purchase price under the installment purchase contract or lease are extinguished by a failure to appropriate money. The holder of such an instrument is in a position very much like a holder of a bond except that he has no enforceable right to receive money from the municipality if the municipality decides not to appropriate funds to pay the purchase price in any given year. Usually in the event the municipality fails to appropriate, the certificate holders or a trustee for them will receive ownership of the facility that was financed by the certificates. See NRS 350.800.

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E. "Special Assessment Obligations". These are securities payable from "special" assessments levied against property within a municipality that is "specially" benefited by installation of the improvements financed with the bonds. Most frequently these types of bonds are used, for example, on a street paving project or sidewalk project. A municipality may pave several blocks of street and assess property owners whose property fronts on the street for the cost of the paving. If the municipality decides to make the assessments payable over a term of years rather than immediately, the municipality can issue bonds secured by payments of special assessments made by the property owners. In Nevada, special assessment bonds can be additionally secured by a promise by the municipality to pay the bonds from its general fund or from ad valorem taxes levied throughout the municipality. Thus, if a particular property owner defaults in his assessment, during the two or three years it takes to foreclose on the property the bonds would not go into default -- rather the municipality would pay principal and interest on the bonds and would reimburse its general fund for the money so expended after the foreclosure action has been completed. See NRS 271.495.

F. "Tax Increment" and Redevelopment Obligations are generally issued as special obligations. See NRS 279.638. In Nevada, these obligations are payable from taxes allocated to a redevelopment agency, (NRS 279.636 and NRS 279.676), or a tax increment area (Ch 279C of NRS). If a city has created a redevelopment district, a redevelopment plan may contain a provision that each of the taxing entities in the redevelopment area are allocated only the portion of the ad valorem taxes which would be produced by the rate levied in the redevelopment area based upon the total sum of assessed valuation as shown on the assessment roll last equalized before the effective date of the ordinance approving the redevelopment plan. The portion of the taxes levied in each year in excess of that amount is paid into a special fund of the redevelopment agency to pay debt service on the redevelopment agency's bonds, except that taxes levied for bonds and tax overrides voted on or after November 4, 1996 are not distributed to redevelopment agencies. A similar rule applies to tax increment areas created by cities or counties under Chapter 279A of NRS.

TIDs and STAR Bonds. In 2005, the legislature authorized a different type of tax increment area, a "Tourism Improvement District", which is supported by the sales tax increment in the district, rather than the property tax. NRS Chapter 271A. These Districts are created by cities or counties for tourism increasing related purposes after the creating agency makes a finding that it expects that a preponderance of the new sales tax in the district will come from sales to non-Nevada tourists in the district. The district can only be created in areas where no retail sales have occurred for 120 days prior to the creation of the district, so are often created on vacant to be developed land. Once created, the creating government can issue sales tax increment (sometimes called "STAR") bonds for the district if there is enough sales tax to support the bonds.

G. "Economic Development Revenue Bonds" or "Industrial Development Revenue Bonds". Economic development revenue bonds or industrial development revenues bonds are issued by cities (NRS 268.512-268.568), counties (NRS 244A.669 to 244A.763), or the State (NRS 349.400 to 349.670) for private companies, including nonprofit and for profit companies. They are

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secured by the credit of the private company, not the municipality and are payable solely from monies furnished by the company. The municipality's name is on the bonds herein, however, typically in order to obtain the benefits of the federal tax exemption for municipal bonds.

III. PROCEDURES FOR ISSUING SECURITIES

A. "Revenue Obligations". Generally revenue bonds may be authorized by an ordinance or resolution of the governing body. No election is generally required, however, smaller general improvement districts organized under NRS chapter 318 and hospital districts organized pursuant to NRS 450.550 to 450.760 must obtain the approval of the Debt Management Commission of the county prior to issuing revenue or special assessment securities. See NRS 350.0145 and NRS 450.665. If a municipality has outstanding bonds and wants to issue additional bonds payable from the same source of revenues, generally, the outstanding revenue bonds will contain covenants which restrict an issuer's ability to issue additional revenue bonds, for example, a "coverage" test which requires that before additional revenue bonds are issued payable from the same source, the revenues or projected revenues of the facility must be at a level sufficient to pay, for example, 125% of debt service on the outstanding bonds and the bonds proposed to be issued

B. "General Obligations". Generally, to issue general obligations, the issuer must obtain approval of the Debt Management Commission ("DMC") of the county in which the issuer is located (NRS 350.0145) and approval of the electorate of the issuer (NRS 350.020).

1. Statutes provide for submission to the electors of the municipality only at the City (June of odd numbered years) or State (November of even numbered years) general elections, or as described in Section 2 below at a special election.

a. A proposal to issue or incur general obligations may be combined into a single proposition with a proposal to levy a tax override pursuant to NRS 354.5982 or NRS 387.3285, if the purpose of the proposals are related. NRS 350.021.

b. Before a proposal to issue general obligations that will result in an increase in the rate of property taxes may be submitted to the DMC, a municipality must determine whether there is an "affected governmental entity", and if there is an affected governmental entity, provide written notification to that entity of the proposal, the estimated amount the proposal would increase property taxes and the effect of the increase on the entity. The governing body of an affected entity must by resolution, approve or object to the proposal. If such governing body approves, the resolution must state that the affected entity has no intent to levy property taxes which, if combined with the increase proposed in the proposal, would cause the combined property tax rate to exceed the \$3.64 limitation on property

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taxes. If the governing body objects, the resolution shall state the reasons for objecting. The resolution approving or objecting must then be submitted to the DMC. The DMC must then resolve any conflict between the municipality proposing to issue the general obligations and the affected entity over the use of the remaining allowable increase in property taxes.

c. The proposal must be approved by an affirmative two-thirds majority vote of all members of the DMC, and the DMC may not approve the proposal unless the requirements of NRS 350.013 to NRS 350.015, inclusive, are met.

d. The proposal must be submitted to the appropriate official (county clerk, registrar of voters or city clerk) within the times set forth in NRS 293.481, 295.121 and 295.217.

e. The issuer must comply with requirements to publish a notice of election and a notice of close of registration and to disclose certain financial information in the sample ballot, as well as arguments for and against the proposal. NRS 350.022, 350.024, 350.027, 293.560 and 293.565.

f. Cities of a population of 10,000 or more, counties of a population of 40,000 or more and certain districts proposing to issue voter-approved bonds are required to appoint committees to prepare arguments advocating and opposing approval of bond questions (and other ballot questions, for example, tax override questions).

2. A special election may be held only if the governing body of the municipality determines, by a unanimous vote, that an emergency exists. "Emergency" means any unexpected occurrence or combination of occurrences which requires immediate action by the governing body to prevent or mitigate a substantial financial loss to the municipality or to enable the governing body to provide an essential service to the residents of the municipality. NRS 350.020.

C. "Double Barrel Obligations". Under NRS 350.020, to issue revenue-backed general obligations, an issuer must first receive approval of the Debt Management Commission. The issuer then adopts a resolution of intent by a two-thirds majority vote authorizing the publication of two notices in a newspaper of general circulation in the municipality. One notice states that it is the issuer's intent to issue the revenue-backed general obligation bonds without an election, based on a finding by the governing body that revenues (rather than taxes) will be sufficient to pay the obligations. The voters in the municipality have 90 days in which to petition the governing body to hold an election and if a sufficient number petition the governing body an election must be held before the obligations are issued. The other notice must be published at least 10 days in advance of

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a public hearing held before the governing body. If express statutory authority exists, this method of financing may also be used when the proceeds of certain excise taxes are received in an amount sufficient to pay debt service. (e.g., NRS 268.095(2) and 244A.637 room taxes imposed by city and county, respectively; NRS 543.690 sales tax for flood control in county of 400,000 or more in population; NRS 365.545 jet aviation fuel tax for transportation projects related to airports; NRS 360.698 15% of consolidated taxes).

D. "Medium-Term Obligations". A medium-term obligation is a note or bond that has a term of 10 years or less, but not a note or bond with a term of less than one year and that is payable in full from money appropriated for the same fiscal year that the obligation is incurred. See NRS 350.007. The following procedure must be followed to authorize the issuance of medium-term obligations. (Note: in addition, DMC approval must be obtained by small general improvement districts (less than 5,000 in population) and by hospital districts.)

1. A notice must be published once in a newspaper of general circulation in the municipality at least 10 days before a public hearing to be held on a resolution authorizing medium-term obligations. NRS 350.087.

2. After a public hearing, if the governing body determines that the public interest requires medium-term financing, it may adopt, by two-thirds of its members, a resolution authorizing medium-term obligations. The resolution must set forth a statement of the facts upon which the finding of "public interest" is made and a statement identifying the source of revenue and dollar amount anticipated to be available for repayment.

3. A certified copy of the authorization resolution, affidavit of publication of notice and evidence of the municipality's ability to repay the proposed obligation from its existing revenues must be forwarded to the State Department of Taxation for approval. NRS 350.089.

4. Once the medium-term obligation is approved, in writing, by the State Department of Taxation, the municipality is authorized to evidence the obligation by an installment purchase agreement, lease purchase agreement, certificates of participation or notes or bonds. Notes or bonds must mature within 10 years. However, if the term of the notes or bonds is more than 5 years, the term may not exceed the estimated useful life of the asset to be purchased with the proceeds from the bonds.

Generally, medium-term obligations are unconditional promises to pay (i.e., general obligations) and count against the municipality's debt limit.

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E. "Installment-Purchase Agreements". Installment-purchase agreements include agreements for the purchase of real or personal property by installment or lease or other transaction as described in NRS 350.800. See NRS 350.0055. Installment-purchase obligations generally are not unconditional (they have a discretionary "no-appropriation" out clause), and do not count against the municipality's debt limit. See NRS 350.800.

Such installment-purchase agreements that are for an amount that exceeds \$100,000 for a local government in a county whose population is 100,000 or more, or that exceed \$50,000 for a local government in a county whose population is less than 100,000 must be authorized by following the same procedure for medium-term obligations. See NRS 350.087 through 350.091. In addition, if the installment purchase agreement has a term of more than 10 years, it must be approved by the Debt Management Commission, and the authorizing resolution must contain a statement comparing the cost of installment-purchase financing with other available methods of financing, including, without limitation, financing with general obligation bonds or revenue bonds. See NRS 350.014 and 350.087. If such statement concludes that the installment-purchase financing is more expensive than other available methods of financing, the resolution must contain an additional statement explaining the reasons for choosing installment-purchase financing instead of a less expensive alternative. Id.

An installment-purchase agreement issued pursuant to NRS 350.087 must have a term that is 30 years or less, must bear interest at a rate or rates that do not exceed by more than 3 percent the Index of Revenue Bonds which was most recently published before the local government enters into the installment-purchase agreement, and may, at the option of the local government, contain a provision that allows prepayment of the purchase price upon such terms as are provided in the agreement. See NRS 350.091. Additionally, if the term of the installment purchase agreement is more than 5 years, the term may not exceed the weighted average use life of the asset to be financed with the proceeds of the installment-purchase agreement.

F. "Special Assessment Obligations". Chapter 271 of NRS sets forth general powers of county, city or town, to establish special assessment districts for the following projects: curb and gutter, drainage, off-street parking, overpass, park, sanitary sewer, security wall, sidewalk, storm sewer, street, street beautification, transportation, underpass, water, commercial revitalization or any combination. To issue these obligations, a municipality must first either (i) receive a petition from owners of lands to be assessed for not less than 90% of the entire cost of the project constituting at least 66 2/3 percent in frontage, area or other property basis used for the method of assessment (NRS 271.285), (ii) adopt a provisional order resolution and notify all of the property owners who are to be assessed of the date and time of a public hearing on construction of the improvements, or (iii) in the case of a commercial area revitalization project, receive a petition signed by owners of tracts constituting one-half of the basis used for computation of assessments (NRS 271.305). Generally, if more than one-half (one-third in the case of commercial revitalization projects) of the property to be assessed (measured by the amounts of the assessments against the property) protests the creation of the improvement district, the governing body cannot proceed with the improvement district or

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issuing special assessment bonds unless it pays more than one-half of the cost of the project from a source other than special assessments. (There are a few exceptions to this in the statute). After the provisional order resolution has been adopted, the governing body lets the construction contract and then either proceeds to levy the assessments and issue the bonds, or issues interim warrants to finance construction and levies the assessments and issues the bonds after construction has been completed. Property owners do have a second opportunity to protest, at a hearing on the assessments, but this hearing concerns whether the method of computing the assessment was applied correctly to a particular property owners. NRS 271.380, 271.385.

G. "Redevelopment and Property Tax and Sales Tax Increment Obligations. In order to issue this type of obligation, a city or county must have created a redevelopment agency, tax increment area or tourism improvement district; adopted a plan which contains a provision for the division of, and the tax increment which results from that division, taxes that must exceed (in an amount sufficient to support debt service) the total assessed value of the taxable property as shown on the assessment roll last equalized before the effective date of the ordinance approving the redevelopment plan (in the case of redevelopment areas and tax increment areas. In the case of tourism improvement districts, a hearing before the school district board of trustees, board of county commissioners (if it is not the creating government), and state tourism board is required before the district is created, and the district must also be approved by the tourism board and governor before it is created. These districts depend on sales tax increment, rather than property tax increment. Redevelopment bonds may be authorized by a resolution of the agency but must not be issued with a maturity date after the date the redevelopment plan expires. NRS 279.619. Tax Increment district bonds are limited to a term of 30 years from the creation of the district, and the term of tourism improvement district ("STAR") bonds is limited to 20 years from the creation of the district.

H. Economic Development Revenue Bonds or Industrial Development Revenue Bonds. These bonds generally are issued pursuant to a resolution of the governing body. Federal and Nevada law requires a hearing before bond are issued, and certain findings must be made by the governing body. (See NRS 268.512 to 268.568, NRS 244A.669 to 244A.763 and NRS 349.400 to 349.670). These bonds do not count against the municipality's debt limit and are payable solely from monies furnished by the company. See, e.g., 244A.713.

I. State Obligations. State general obligations for state projects (prisons, buildings, etc.) are generally authorized by a separate special act or in each session's capital improvement bill, and as a procedural matter are issued under the state securities law, NRS 349.150 to NRS 349.364. Certain State programs of assistance to local governments include issuance of State general obligation bonds, e.g., the State's municipal bond bank act, Chapter 350A of NRS. The State also issues revenue bonds for highway projects (NRS 408.273) and bonds similar to economic development revenue bonds for housing projects. (See Chapter 319 of NRS.)

The Nevada System of Higher Education (the "System") has authority to issue bonds. Projects for the universities within the System to be financed with bonds are generally authorized in

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a special act or the session's capital improvements bill. As a procedural matter, the University Securities Law, NRS 396.809 to 396.885, applies to the revenue bonds of the System. If State general obligation bonds are authorized for a project of the System, the State Securities Law sets the procedures.

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IV. CONSTITUTIONAL AND STATUTORY LIMITATIONS.

A. Debt Limits.

1. Constitutional State Debt Limit.

Nevada Constitution, Article 9, section 3 limits the aggregate amount (exclusive of interest) of state debt to two per cent of the assessed valuation of the state, as shown by the reports of the county assessors to the state controller. Excepted from the debt limit are contracts necessary, expedient or advisable for the protection and preservation of any of the state's property or natural resources, or for the purposes of obtaining the benefits thereof. The exception has been generally interpreted to apply to water projects, Marlette Lake v. Sawyer, 79 Nev 334 (1963), State Gen. Obg. Bond Com. v. Koontz, 84 Nev. 130 (1968), but not university building, Morris v. Board of Regents, 97 Nev. 112 (1981) or cultural projects, Brewery Arts Center v. State Board of Examiners, 180 Nev. 1050 (1992).

Additionally, in a lease-purchase financing of a state building, state debt is created when the State itself is obligated to contribute or appropriate moneys to a fund created to pay rent on the state building. State ex rel. Nev. Bldg. Auth. v. Hancock, 86 Nev. 310, 315, 468 P.2d 333 (1970). However, where a lease-purchase financing agreement contains a non-appropriation clause providing that the lessor/seller can retake the leased space in the event the State does not appropriate funds to pay rent the agreement does not count against the State debt limit. Employers Ins. Co. of Nevada v. State Brd. of Examiners, 117 Nev. - - -, 21 P.3d 628, 632 (2001). Likewise, leases of equipment that contain a non-appropriation out clause do not count against the State debt limit. Business Computer Rentals v. State Treasurer, 114 Nev. 63, 71, 953 P.2d 13, 17 (1998).

2. Statutory Local Government Debt Limits.

a. A county's debt limit is 10 percent of total last assessed valuation of the taxable property of the county. NRS 244A.059. It excludes any outstanding revenue bonds, special assessment bonds, or other outstanding special obligation securities, any short-term securities issued in anticipation of and payable from general (ad valorem) taxes levied for the current fiscal year, and any indebtedness not evidenced by notes, bonds or other securities. Additional debt limits also apply to certain types of bonds (e.g., recreation bonds, see NRS 244A.653 and 244A.655); and debt incurred for a county "Bond Bank" is excluded from the 10% limitation, but has its own 15% limitation. See NRS 244A.059.

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b. A city's debt limit for incorporated cities is set forth in NRS 266.600(4) as 30 percent of the total assessed valuation of the taxable property within such city. Chartered cities have debt limits as set forth in their charters (e.g., Henderson, Sec. 7.010, 15%; North Las Vegas, Sec. 7.010, 20%; Las Vegas, Sec. 7.040, 20%; Carson City, Sec. 7.010, 15%; Reno, Sec. 7.010, 15%; and Sparks, Sec. 7.010, 20%).

c. A school district's debt is limited to 15 percent of the total of the last assessed valuation of taxable property, excluding motor vehicles, situated within the district. NRS 387.400.

d. A general improvement district's debt limit is 50% of the total of the last assessed valuation of taxable property (excluding motor vehicles) situated within such district. NRS 318.277.

e. An unincorporated town's debt limit is 25% of the total last assessed valuation of the taxable property in the town. NRS 269.425.

f. Lease purchase and installment purchase agreements, if it has a “no appropriation” out clause, generally does not count against the debt limit, (see NRS 350.800) nor do revenue bonds (see e.g., NRS 244A.059).

B. Tax Limits.

1. Nevada Constitution, Article 10, Section 2 limits the overlapping tax rate to five cents on one dollar of assessed valuation for the total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof.

2. Statutory Tax Limits.

a. NRS 361.453 further limits the total ad valorem tax levy for all public purposes to \$3.64 per \$100 of assessed valuation. There are certain statutory exceptions for local governments in severe financial condition and for certain State obligations.

b. NRS 354.59811 limits the rate of taxes ad valorem to a rate that will generate, from the current year's assessed valuation of property that was on the prior year's tax rolls, 106 percent of the maximum revenue allowable from taxes ad valorem for the preceding fiscal year. There are certain exceptions.

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3. Other statutory limits exist with respect to the maximum rates of that certain specific taxes, such as fuel taxes, room taxes, sales taxes, etc.

C. Impairment of Contract. If the State has authorized a particular type of borrowing and it or a local government has borrowed money pursuant to that authority, the State cannot change the laws in a manner that will “impair” the contract with the bondholders. Art. 1, Sec. 10, United States Constitution; Art. 1, Sec. 15, Nevada Constitution. The U.S. Supreme Court has interpreted this clause in the U.S. Constitution strictly, and held actions by states that diminished bondholder security to be invalid. See U.S. Trust Company of New York v. State of New Jersey, 431 U.S. 1 (1977). Nevada has also statutorily enshrined this principal. See, e.g., NRS 350.610.

V. SALE OF BONDS BY COMPETITIVE BID OR NEGOTIATED SALE

A. Competitive Bid. Generally in Nevada, most bonds must be sold by competitive bid to the purchaser determined by the municipality to have the best price and interest rate, if the credit rating of the municipality is A- or better and:

1. The bonds are general obligation bonds;
2. The primary security for the bonds is an excise tax; or
3. The bonds are special assessment bonds also secured by a pledge of the taxing power and general fund of the municipality.

B. Negotiated Sale. Generally, the sale of bonds other than those listed above in paragraph A may be negotiated after an underwriter is selected pursuant to a procedure set forth in NRS 350.175 and 350.185, including request for proposals.

C. Exceptions to Competitive Bid and Negotiated Sale Procedures. The following bonds may be issued without regard to the competitive bid requirements or the procedure set forth in NRS 350.175 and 350.185 for negotiated sales:

1. Variable rate bonds.
2. Bonds in the aggregate principal amount of \$1,000,000 or less.
3. Bonds issued with a term of 3 years or less.
4. Bonds which were competitively bid, but no bids were received or all bids were rejected.
5. Lease purchase, installment purchase or certificates of participation.

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6. Economic development revenue bonds.
7. Bonds sold to:
 - a. the U.S. or agency thereof;
 - b. the State of Nevada;
 - c. any other municipality; or
 - d. not more than 10 investors each of who certified that he has a net worth of \$500,000 or more and is purchasing the bonds for investment and not for resale.
8. Bonds which require unusual methods of financing, if chief administrative officer makes certain certifications in writing.
9. Refunding bonds, if chief administrative officer makes certain certifications in writing.
10. Bonds which are sold at a time when, due to particular conditions in the market, a negotiated sale may provide a benefit to the municipality, if the chief administrative officer so certifies in writing.
11. Special assessment bonds which are not secured by a pledge of the taxing power and general fund of the municipality.
12. Revenue bonds issued pursuant to Chapter 350A of NRS which are secured by a pledge of the allocable revenues of the municipality.

VI. FEDERAL REGULATION

A. Federal Income Tax Laws. Sections 103 and 141-150 of the Internal Revenue Code of 1986 provide a complicated set of rules that are required to be followed in order for a municipal bond to bear interest that is exempt from federal income taxation. These rules are generally aimed at preventing:

1. The tax exemption from benefiting private businesses, with limited exceptions for permitted "private activity bonds."
2. A municipality from earning "arbitrage profits," i.e., profits from borrowing at a tax exempt interest rate (e.g., today, 4-5%) and investing the borrowed monies in higher interest rate (e.g. 6-8%) taxable bonds, like U.S. Treasury bonds.

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B. Federal Securities Laws.

1. Rule 15c2-12 of the United States Securities Exchange Commission (“SEC”) is aimed at regulating the disclosure made to prospective investors in tax exempt bonds. It generally requires, for bonds or notes sold to the public:

a. An official statement or prospectus, deemed "final" by the municipality, containing relevant information about the borrowing and the security for the borrowing, and

b. An undertaking by the municipality to make annual and other continuing disclosure about the security for the borrowing. This requires something like an annual report for municipal bonds.

2. Rule 10b-5 of the SEC prohibits making false or misleading statements, or omitting statements that should be made, in official statements. Early in 1996, the SEC sanctioned the members of the board of supervisors of Orange County, California for violating this rule in connection with bond and note offerings prior to that county's bankruptcy. Later in 1996, Maricopa County (Arizona's largest county) was sanctioned by the SEC for not disclosing all material information in its Official Statements and in September of 1997 the City of Syracuse, New York, was sanctioned for misstatements in its official statement. The SEC in 1998 filed an action against Nevada County, California over alleged violations of Rule 10b-5 in connection with a land-based (similar to an assessment district as described above) financing that is in default.

VII. ROLE OF BOND COUNSEL

1. Prepare resolutions and other legal documents for financings.
2. Prepare official statement for financings that are publicly offered.
3. Review signed copies of all documents related to the financing.
4. Render legal opinion on validity of financing and, if applicable, exemption of interest from federal income taxation.
5. Assist in negotiating any guaranteed investment contracts when used for investment of bond proceeds.
6. Assist with drafting, reviewing and testifying with respect to finance-related legislation.