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10-3-2013

### Summary of North Lake Tahoe Fire v. Washoe County Commissioners, 129 Nev. Adv. Op. 409

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*Nevada Law Journal*

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#### Recommended Citation

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## CONSTITUTIONAL LAW: JUSTICIABILITY, POLITICAL QUESTION

### Summary

The court determined two issues: (1) whether County Commissioners' actions withholding property tax distributions to offset the cost of refunds was proper under Nevada's current statutory scheme; and (2) whether judicial interference in this matter is precluded by the political question doctrine.

### Disposition

"Because respondents were within their authority to withhold distributions, and because the manner in which they did so was discretionary, the political question doctrine precludes judicial review."

### Factual and Procedural History

This action arose when the Washoe County Board of County Commissioners provided refunds to Incline Village and Crystal Bay property owners who had paid excessive property taxes due to improper appraisals. Respondents sought to cover the cost of the refunds by withholding amounts from property tax distributions made to various county taxing units. Appellant North Lake Tahoe Fire Protection District (FPD), which provides fire services and emergency medical services to Incline Village, was among the taxing units from which County Commissioners withheld distribution.

FPD petitioned the district court for a writ of mandamus to prevent respondents from withholding any portion of tax revenues. The district court denied relief, reasoning that a resolution would require the Court to wrongfully interfere with the political decisions of another branch of government. Further, that Court held that a writ may only prescribe a political officer's actions if those actions are arbitrary and capricious.

### Discussion

"The political question doctrine stems from the separation of powers essential to the American system of government." The doctrine exists to prevent one branch of government from interfering with the powers of another branch.

Article 3, section 1 of the Nevada Constitution contains Nevada's own separation of powers doctrine, delineating the role of each branch. Specifically, the Legislature enacts laws, the executive carries out those laws, and the Judiciary hears and determines justiciable controversies to decide what the law is. The political question doctrine limits justiciability when the controversy involves policy choices that are constitutionally reserved to either the legislative or executive branch.

The Court adopts the factors established in *Baker v. Carr*<sup>2</sup> to assist in its review. Here, if a clear statutory directive of NRS 474.200<sup>3</sup> had been violated, the political

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<sup>1</sup> By Erica Nannini.

question would not present an obstacle to the Court’s review. However, the Court does not read the statute to require distribution to FPD of all taxes received. Rather, pursuant to NRS 474.200(3), the taxes collected on behalf of a fire district must be credited to the fire district’s funds. However, this statute provides no guidance when a refund is due of overpaid, unconstitutionally-collected taxes. The court looks to other sections of the NRS<sup>4</sup> not directly on point to deduce that NRS 474.200 does not preclude the withholding method that the County Commissioners employed.

Further, the Court distinguishes *Golconda Fire Prot. Dist. V. Cnty. of Humboldt*<sup>5</sup> from the present case. Here, the issue is unauthorized apportionment and improper use of interest legitimately owed to a fire protection district, and *Golconda* does not hold that improperly collected taxes cannot be recovered at a later time.

“In stating that NRS 474.200 creates a constructive trust that places fiduciary duties on the County to ‘administer’ the taxes collected on behalf of FPD, we acknowledged the County’s need to manage the tax distributions . . . . Thus, the County Commissioners did not violate NRS 474.200.”

### *The withholding decision*

“County [C]ommissioners have the power to budget, spend, and levy and collect property taxes.”<sup>6</sup> This affords the County Commissioners a form of executive power, so long as it does not conflict with legislative purpose. Notably, it is the County’s duty to administer the taxes collected on FPD’s behalf.

Here, all three factors established in *Baker* are satisfied. Aside from NRS 354.240, the County Commissioners have discretion when deciding how to satisfy the refund and corresponding budgeting obligations. Therefore, because there is no apparent conflict with legislative purpose, the court declines to meddle in the administration of the tax distribution and refund process. To resolve the present case would encroach upon the County Commissioners’ legislative and executive functions. Accordingly, the district court correctly held that FPD’s petition constituted a nonjusticiable political question.

### Conclusion

The Court concludes that the County Commissioners’ decision to withhold collected property taxes from FPD was within its authority, and that the precise manner in which it undertook that task goes beyond the court’s purview. “Consequently, further judicial review is precluded by the political question doctrine. The district court’s order denying extraordinary writ relief is affirmed.”

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<sup>2</sup> 369 U.S. 186, 217 (1962).

<sup>3</sup> NEV. REV. STAT. § 474.200 (2013).

<sup>4</sup> NEV. REV. STAT. §§ 354.220–250 (2013).

<sup>5</sup> 112 Nev. 770, 774, 918 P.2d 710, 712 (1996).

<sup>6</sup> See NEV. REV. STAT. §§ 244.150; 244.1505; 244.200–.255 (2013).