

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 SCENIC NEVADA, INC.,
3 Appellant,

4 vs.

5 CITY OF RENO, a political subdivision
6 of the State of Nevada,
7 Respondent.

Supreme Court Case No. 65364

District Court Case No. CV12-02863
Electronically Filed
Aug 18 2016 10:01 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8

9 **RESPONDENT’S ANSWER TO**
10 **APPELLANT’S PETITION FOR REHEARING**
11 **(City of Reno)**

12 Second Judicial District Court, County of Washoe
13 The Honorable Patrick Flanagan, District Judge

14

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1 Scenic Nevada’s Petition for Rehearing (the “Petition”) argues that the 2012
2 Digital Ordinance did not reenact the Conforming and Banking Ordinances, and as
3 a result, the Digital Ordinance is unconstitutional. The sole legal authority offered
4 by Scenic Nevada supporting this argument is NRS 0.023 which states:

5 **NRS 0.023 Construction of reenacted, amended or revised laws**
6 **as continuation of prior law; effect of reference to repealed law**
7 **that is in substance reenacted.** The provisions of any law or statute
8 which is reenacted, amended or revised, so far as they are the same as
9 those of prior laws, shall be construed as a continuation of such laws
and not as new enactments. If any provision of a law is repealed and in
substance reenacted, a reference in any other law to the repealed
provision shall be deemed to be a reference to the reenacted provision.

10 In the words of Scenic Nevada, “NRS 0.023 applies to ‘any law or statute.’
11 Therefore, it should apply to the ordinances of the City of Reno.’ See, Petition at 4.
12 Based on this reasoning, Scenic Nevada argues that “the Banking and Relocation
13 Ordinances were, and still are, unconstitutional, and thus, the 2012 Digital
14 Ordinance, which is based on the Banking and Relocation Ordinances, also is
15 unconstitutional.” Id. at 6.

16 **1. NRS 0.023 does not apply to municipal ordinances**

17 The issue presented by the Petition is the meaning and legislative intent of
18 the phrase “any law or statute” in NRS 0.023.

19 A statute's construction is governed by legislative intent, and we discern this
20 intent from the entire statute, not from a single provision. Williams v. Clark County
21 Dist. Attorney, 118 Nev. 473, 484, 50 P.3d 536, 543 (2002), as corrected (July 26,

1 2002). It is a well-recognized tenet of statutory construction that multiple
2 legislative provisions be construed as a whole, and where possible, a statute should
3 be read to give plain meaning to all its parts. Other words or phrases used in the
4 statute or separate subsections of the statute can be reviewed to determine the
5 meaning and purpose of the statute. Diamond v. Swick, 117 Nev. 671, 676, 28 P.3d
6 1087, 1090 (2001) (quoting Gaines v. State, 116 Nev. 359, 365, 998 P.2d 166, 169–
7 70 (2000)).

8 Here, Scenic Nevada would have the Court believe that the scope of phrase
9 “any law or statute” in NRS 0.023 is unlimited. It isn’t however. Instead, under the
10 rules of statutory construction, NRS 0.023 must be understood in light of other
11 provisions contained in NRS Chapter 0. In particular, NRS 0.010 expressly limits
12 the scope and application of the phrase “any law or statute” in NRS 0.023;
13 specifically:

14 **NRS 0.010 Scope.** This chapter provides definitions and
15 declarations of legislative intent which *apply to Nevada Revised*
Statutes as a whole. [Italics added.]

16 Municipal legislation and the Nevada Revised Statutes are two completely
17 different bodies of law. The city council enacts municipal ordinances. See, Reno
18 City Charter § 2.080(1)([t]he City Council may make and pass all ordinances,
19 resolutions and orders not repugnant to the Constitution of the United States or the
20 Constitution of the State of Nevada, or to the provisions of Nevada Revised Statutes

1 or of this Charter, necessary for the municipal government and the management of
2 the affairs of the City, and for the execution of all the powers vested in the City).

3 In contrast, the Nevada Legislature enacts the Nevada Revised Statutes. See,
4 Nev. Const., art. 4, § 1 ([t]he Legislative authority of this State shall be vested in a
5 Senate and Assembly which shall be designated “The Legislature of the State of
6 Nevada” and the sessions of such Legislature shall be held at the seat of
7 government of the State).

8 Because NRS 0.010 limits the construction of NRS Chapter 0 to the Nevada
9 Revised Statutes as a whole, NRS 0.023 does not apply to municipal legislation like
10 the Banking and Relocation Ordinances enacted by the Reno City Council. Based
11 on the plain language NRS 0.010, it is clear that the Legislature never intended the
12 definitions and declarations of legislative intent in NRS Chapter 0, including NRS
13 0.023, to apply to municipal legislation or other bodies of law beyond the Nevada
14 Revised Statutes as a whole.

15 Furthermore, nothing in the legislative history of AB 542 offered by Scenic
16 Nevada indicates that the Legislature intended NRS 0.023 to apply to municipal
17 legislation. Indeed, the testimony provided by Scenic Nevada shows just the
18 opposite. In the Petition, Scenic Nevada quotes the testimony of Lorne
19 Malkiewich, Director, Legislative Counsel Bureau, on April 2003 before the
20 Assembly Committee:

1 There's a *bill in this session on Chapter 62 of NRS*. It's a huge bill
2 that redoes the juvenile code. A lot of provisions are being *repealed*
3 *and readopted as Chapter 62A and 62B*. If the *statute* is just being
4 readopted in its entirety, with no change, what we want is for
5 interpretation to go along with that section. [Emphasis and italics
6 added.] See, Petition, at 5.

7 Here, Mr. Malkiewich's comments clearly indicate that AB 542 is aimed at
8 the Legislature reenacting statutes and chapters of Nevada Revised Statutes, not
9 municipal legislative bodies reenacting ordinances. The title of AB 542 further
10 confirms this is the case: "AN ACT *relating to the Legislature*; making various
11 changes relating to the *operation of the Legislature and the Legislative Counsel*
12 *Bureau*; and providing other matters properly relating thereto." [Emphasis and
13 italics added.] See, Roberts v. State, 104 Nev. 33, 37, 752 P.2d 221, 223 (1988) (the
14 title of an act or statute may be considered in construing a statute) (internal citations
15 omitted).

16 In conclusion, NRS 0.023 does not apply to municipal legislation like the
17 Banking and Relocation Ordinance because NRS 0.010 limits its application to the
18 Nevada Revised Statutes as a whole. Accordingly, Scenic Nevada's argument fails.

19 **2. Alternatively, Reno Municipal Code § 18.16.908 (billboard**
20 **relocation and banking ordinance) does not amend, annul, repeal,**
21 **set aside or suspend the Initiative.**

22 In November, 2000, the citizens of the City of Reno enacted the Initiative
23 which states that "the construction of new off-premises advertising

1 displays/billboards is prohibited, and the City of Reno may not issue permits for
2 their construction.” See, RMC § 18.16.902 (codified).

3 Approximately seven months later, on June 6, 2001, the Nevada Legislature
4 enacted NRS 278.0215:

5 **NRS 278.0215 Nonconforming outdoor advertising structures:**
6 **City or county to pay just compensation or authorize relocation if**
7 **it requires removal or prohibits routine maintenance; exceptions;**
8 **required removal of structure pursuant to amortization schedule**
9 **prohibited; public hearing required in certain circumstances;**
10 **appeal of amount of just compensation.**

11 1. If a city or county, through the adoption, operation or
12 enforcement of any ordinance or code, requires the removal of a
13 nonconforming outdoor advertising structure, the city or county shall:

14 [...]

15 *(b) Authorize the owner of the nonconforming outdoor*
16 *advertising structure to relocate that structure to a site which is*
17 *determined to be a comparable site by the owner of the*
18 *nonconforming outdoor advertising structure and which is approved*
19 *by the city or county as an appropriate site for the structure.*

20 2. If a city or county prohibits the owner of a nonconforming
21 outdoor advertising structure from engaging in routine maintenance of
the nonconforming outdoor advertising structure, the city or county
shall provide just compensation or authorize a comparable alternative
location for the nonconforming outdoor advertising structure in the
same manner as if the city or county had required the removal of the
nonconforming outdoor advertising structure pursuant to subsection 1.

3. A city or county shall not require the removal of a
nonconforming outdoor advertising structure to occur pursuant to an
amortization schedule, regardless of the length of the period set forth in
the amortization schedule. [...]

6. [...]

(d) “Nonconforming outdoor advertising structure” means an
outdoor advertising structure which is constructed or erected in
conformance with all applicable local ordinances and codes in effect
on the date a building permit is issued for the outdoor advertising
structure and which does not conform subsequently because of a
change to the local ordinances or codes. The term does not include an

1 outdoor advertising structure that is authorized by a special use permit,
2 conditional use permit, variance, waiver, condition of zoning or other
3 approval for the use of land if, when the special use permit, conditional
4 use permit, variance, waiver, condition of zoning or other approval for
5 the use of land was first approved, the special use permit, conditional
6 use permit, variance, waiver, condition of zoning or other approval for
7 the use of land was limited by a specific condition which allowed or
8 required the governing body of the city or county to conduct a review
9 of the structure.

10 (e) “Outdoor advertising structure” means any sign, display,
11 billboard or other device that is designed, intended or used to advertise
12 or inform readers about services rendered or goods produced or sold on
13 property other than the property upon which the sign, display, billboard
14 or other device is erected. [Emphasis and italics added.]
15 (Added to NRS by 2001, 2281)

16 Black’s Law Dictionary defines “non-conforming use” as a land use that is
17 impermissible under current zoning restrictions but that is allowed because the use
18 existed lawfully before the restrictions took effect. See, USE, Black's Law
19 Dictionary (10th ed. 2014). In addition, Nevada recognizes the well-established
20 maxim that the expression of “one thing is the exclusion of another,” or “*expressio*
21 *unius est exclusion alterius.*” See, Galloway v. Truesdell, 83 Nev. 13, 26, 422 P.2d
237, 246 (1967); see also State, Dep't of Taxation v. DaimlerChrysler, 121 Nev.
541, 548, 119 P.3d 135, 139 (2005) (stating that “omissions of subject matters from
statutory provisions are presumed to have been intentional”). Hernandez v.
Bennett-Haron, 128 Nev. Adv. Op. 54, 287 P.3d 305, 316 (2012).

Here, NRS 278.0215 addresses “nonconforming” outdoor advertising
structures. When the citizens of Reno enacted the Initiative in 2000, the Initiative
expressly modified City zoning law to prohibit **new** off-premises advertising

1 displays, and consequently, all existing, legally established, permanent off-premises
2 advertising displays in the City of Reno immediately became “non-conforming”
3 outdoor advertising structures. The Initiative itself had no bearing or impact on
4 existing off-premises advertising displays. By operation of law, the Initiative
5 allowed existing billboards to continue because they existed lawfully before the
6 Initiative took effect.

7 NRS 278.0215 readily embraces the distinction between “new” and
8 “nonconforming” outdoor advertising structures. Because the scope of NRS
9 278.0215 is limited to “nonconforming” outdoor advertising structures, NRS
10 278.0215 does not amend, annul, repeal, set aside or suspend the Initiative in any
11 manner or fashion. If it did, it too would be void *ab initio* based upon the three year
12 prohibition on amending, annulling, repealing, setting aside or suspending an
13 initiative set forth in Nev. Const., art. 19, § 2(3).¹ But it doesn’t.

14 On January 22, 2002, approximately six months after the enactment of NRS
15 278.0125, the City Council enacted RMC § 18.16.908, entitled, “Relocation of
16 Existing, Legally Established Permanent Off-Premises Advertising Displays.”
17 Consistent with NRS 278.0215, RMC § 18.16.908 reads as follows:

18 **Section 18.16.908. - Relocation of Existing, Legally Established**
19 **Permanent Off-Premises Advertising Displays.**

20 _____
21 ¹ As an aside, NRS 0.023 does not apply because the Legislature enacted NRS 278.0215 in 2001.
The Legislature did not amend or reenact NRS 278.0215 at any time after 2001.

- 1 (a) Except as otherwise provided in this chapter, an existing, legally
2 established, permanent off-premises advertising display may be
3 relocated to a permitted location as described in Section 18.16.904
4 provided that such existing, legally established, permanent off-
5 premises advertising display complies with all requirements of this
6 chapter and Chapter 18.08, as amended.
- 7 (b) Two permits shall be required prior to relocation or banking of an
8 existing, legally established, permanent off-premises advertising
9 display, one to remove the existing off-premises advertising display
10 from its current physical location and one to relocate the existing off-
11 premises advertising display to a different physical location or to a
12 bank of currently not erected but previously existing, legally-
13 established, permanent off-premises advertising displays which are
14 eligible to be erected on a physical location at a later date provided
15 they comply with all requirements of this chapter, as amended.
- 16 (c) A person who is granted a permit to remove an off-premises
17 advertising display proposed to be relocated under this section shall
18 remove the existing, legally established, permanent off-premises
19 advertising display in all visual respects from the original location
20 and return the site to a condition consistent with immediately
21 surrounding area, unless otherwise required by the permit, within the
time set by the permit and prior to the issuance of the permit to
relocate the existing, legally established, permanent off-premises
advertising display. A letter of credit may be required to guarantee
removal of the existing off-premises advertising displays, including
any parts located below ground, on property in which any
governmental entity has a property interest.
- (d) Existing, legally established, permanent off-premises advertising
displays which have a display area less than the maximum allowed
under Section 18.16.905 and are proposed to be increased in display
area, shall require a two for one removal to relocation ratio prior to
issuance of the permit for relocation. The number of allowed off-
premises existing, legally established, permanent advertising
displays under Section 18.16.902(b) will be reduced accordingly.
- (e) A person who requests a permit to relocate an existing, legally
established, permanent off-premises advertising display shall:
- (1) Identify the existing, legally established, permanent advertising
display to be relocated, by number assigned by the City of Reno.

1 (2) Present to the community development department a notarized
2 statement from the owner(s) of the existing, legally established,
3 permanent advertising display to be relocated that he/they
4 has/have removed, or caused to be removed, the existing, legally
5 established, permanent off-premises advertising display in
6 accordance with subsection (c) above.

7 (3) The owner of an existing, legally established, permanent
8 advertising display that has been removed and banked pursuant
9 to subsection (b), prior to July 19, 2012, has 15 years in which to
10 apply for and obtain a permit to relocate the existing, legally
11 established, permanent advertising display. Any permanent
12 advertising display that has been removed and banked pursuant
13 to subsection (b), after July 18, 2012, has three years in which to
14 apply for and obtain a permit to relocate the existing, legally
15 established, permanent advertising display. The 15 or three years
16 shall run from the date the city approves all work performed
17 under subsection (c), in writing, and/or releases the letter of
18 credit. The permit to relocate an existing, legally established,
19 permanent off-premises advertising display may be sold or
20 otherwise conveyed at the discretion of the owner. If the banked
21 advertising displays are not used within the 15 or three years
they will become unrelocatable.

(4) Nothing in this section shall be construed to mandate relocation
of any existing, legally established, permanent off-premises
advertising display.

(f) From and after the effective date of this ordinance and for a period of
120 days, the city shall not file nor accept any applications nor issue
permits to relocate any off-premises advertising display onto or off
of property annexed subject to the stipulation in the "Verdi"
litigation or the settlement agreement in the "Verdi" litigation or any
interim stipulations in the Reno-Stead Corridor Plan or newly
annexed properties subject to the settlement agreement in the
regional planning litigation. Copies of these stipulations and/or
settlement agreements shall be maintained by the city clerk.

RMC § 18.16.908 is very similar to NRS 278.0215 in its application and
operation. Both NRS 278.0215 and RMC § 18.16.908 regulate existing, non-

1 conforming, permanent off-premises advertising displays. Neither pertains to
2 “new” off-premises advertising displays/billboards prohibited by the Initiative.
3 Both recognize “non-conforming” and “new” as mutually exclusive categories.
4 Galloway, 83 Nev. at 26.

5 This legal distinction reflects the true reality of the situation. In Reno, “non-
6 conforming” outdoor advertising structures are tangible and have existed since
7 enactment of the Initiative in November, 2000. In contrast, “new” off-premises
8 advertising structures have not existed since 2000 because the Initiative prohibits
9 the construction of “new” off-premises advertising structures. Because the
10 Initiative only prohibits the construction of “new” off-premises advertising
11 structures, it does not prohibit the relocation or banking of existing, legally
12 established, non-conforming outdoor advertising structures. Id.

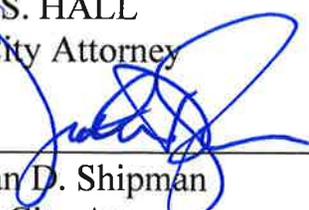
13 In conclusion, like NRS 278.0215, RMC § 18.16.908 only addresses
14 “nonconforming” outdoor advertising structures. Because its scope is limited to
15 “nonconforming” outdoor advertising structures, RMC § 18.16.908 does not amend,
16 annul, repeal, set aside or suspend the Initiative in any manner or fashion. Thus, the
17 City’s enactment of the Relocation and Banking Ordinances in 2002 did not violate
18 the three year prohibition in Nev. Const., art. 19, § 2(3).

19 **AFFIRMATION PURSUANT TO NRS 239B.030**

20 The undersigned does hereby affirm that the preceding document filed in this
21 court does not contain the social security number of any person.

1 Dated this 17th day of August, 2016.

2 KAREL S. HALL
3 Reno City Attorney

4 By:  _____

5 Jonathan D. Shipman
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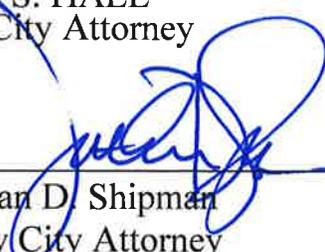
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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this Respondent's Answer to Appellant's
3 Petition for Rehearing, and to the best of my knowledge, information, and belief, it
4 is not frivolous or interposed for any improper purpose. I further certify that this
5 response complies with all applicable Nevada Rules of Appellate Procedure, in
6 particular NRAP 28(e), which requires every assertion in the brief regarding matters
7 in the record to be supported by a reference to the page of the transcript of appendix
8 where the matter relied on is to be found. I further certify that the brief complies
9 with the typeface and type style requirements of Rule 32(a)(4)-(6) (14-point New
10 Times Roman proportionally spaced typeface), as well as the page limitation under
11 Rule 32(a)(7)(A)(i) (25 pages). I understand that I may be subject to sanctions in
12 the event that the accompanying brief is not in conformity with the requirements of
13 the Nevada Rules of Appellate Procedure.

14 Dated this 17th day of August, 2016.

15 KAREL S. HALL
16 Reno City Attorney

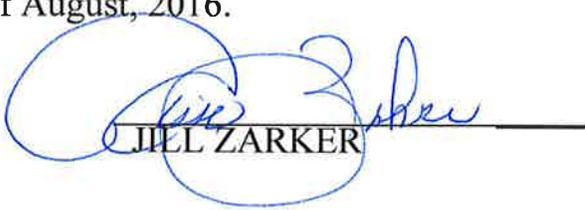
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1 **CERTIFICATE OF SERVICE**

2 I certify that I electronically filed Respondent's Answer to Appellant's
3 Petition for Rehearing with the Clerk of the Court by using the ECF system which
4 served the following parties electronically:

5 MARK WRAY (SBN 4425)
6 Law Offices of Mark Wray
7 608 Lander Street
8 Reno, NV 89509
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10 Dated this 14th day of August, 2016.

11 
12 _____
13 JILL ZARKER
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