

AIRPORT COUNSEL BRIEFING

From: Steven E. Tackes, Esq., Airport Counsel

To: Carson City Airport Authority members, staff

Re: March 15, 2107 CCAA MEETING

1. FOR POSSIBLE ACTION: ELECTION OF A SECRETARY/TREASURER IN ACCORDANCE WITH NRS 844, SECTION 6. (S. Tackes)

Staff Summary: The CCAA will conduct nominations and election for the position of Secretary/Treasurer as permitted by NRS 844, Section 6. The position expires on July 1, 2017.

NRS Chapter 844, Sec 6, provides for the Authority to elect from its board a Chair, Vice Chair, Secretary and Treasurer. Elections may happen at any time, and historically have been held wherever it is most convenient. That said, elections must also be held in June of odd numbered years as the terms expire on July 1 of odd numbered years. There is no prohibition on electing officers to succeeding terms, and in fact, many times this is what has occurred.

The timing for handing off the role of Secretary/Treasurer makes most sense when the Authority is heading into its budget cycle, as it is doing now.

The procedure is for the Chair to call for nominations; close nominations; call for public comment; call for a vote. Authority member Maurice White is the current Secretary/Treasurer and carried the Authority through the last 2 budget cycles. It is my understanding that Authority member Larry Harvey has graciously agreed to serve in this role.

Recommended Action:

Chairman to call for nominations; close nominations. Call for Public Comment.

Bring the matter back to the Authority for a vote.

2. FOR POSSIBLE ACTION: TO APPROVE THE TENTATIVE BUDGET FOR FISCAL YEAR JULY 1, 2017 THROUGH JUNE 30, 2018. (M. White/L. Harvey, B. Kohn, T. Rowe)

Staff Summary: The tentative budget for FY 2017/2018 will be approved in its submitted form, or a budget workshop should be considered.

Background. Each year, the Authority must file a tentative budget with the Dept of Taxation by April 15, and a final budget by May 31.

Tentative Budget. This is filed by the Secretary/Treasurer and is developed by him/her along with the Airport Manager. The fiscal year is July 1, 2017 through June 30, 2018.

NRS 354.596 Tentative budget: Preparation, submission and filing; notice and public hearing; certificate of compliance or lack of compliance from Department of Taxation; amendment to effect compliance.

1. The officer charged by law shall prepare, or the governing body shall cause to be prepared, on appropriate forms prescribed by the Department of Taxation for the use of local governments, a tentative budget for the ensuing

fiscal year. The tentative budget for the following fiscal year must be submitted to the county auditor and filed for public record and inspection in the office of:

- (a) The clerk or secretary of the governing body; and
 - (b) The county clerk.
2. **On or before April 15, a copy of the tentative budget must be submitted:**
- (a) **To the Department of Taxation;** and
 - (b) In the case of school districts, to the Department of Education.

The Tentative Budget is the base for consideration of the final budget. Although the statute is worded a bit odd, the law is that the hearing must be held when the final budget is adopted (not the tentative budget.) It is common for changes to be made between the tentative and final budgets as a result of Authority member, public or other input into the decision.

Nevada law requires a special newspaper notice of the consideration of the tentative budget as the final budget. In other words, this is a published notice for the meeting in May when the Authority expects to approve a final budget.

3. At the time of filing the tentative budget, the **governing body shall give notice of the time and place of a public hearing on the tentative budget and shall cause a notice of the hearing to be published once in a newspaper of general circulation within the area of the local government not more than 14 nor less than 7 days before the date set for the hearing.** The notice of public hearing must state:

- (a) The time and place of the public hearing.
- (b) That a tentative budget has been prepared in such detail and on appropriate forms as prescribed by the Department of Taxation.
- (c) The places where copies of the tentative budget are on file and available for public inspection.

4. **The public hearing on the tentative budget must be held by the governing body not sooner than the third Monday in May and not later than the last day in May.**

As such a notice must go out in May in advance of the regular Airport Authority meeting in May (ie. May 17, 2017, which is beyond the 3rd Monday in May)

The matter for discussion at this meeting is what to include or how to proceed with the tentative budget and whether the Authority wants to schedule a workshop. A workshop would trigger an open meeting under the Nevada Open Meeting law so it is really the same as scheduling a special meeting of the Airport Authority.

The Authority does not need to vote on and approve the tentative budget tonight, but if it is ready and the Authority desires to do so, then this matter is adequately agendaized for that purpose. More commonly, the Authority members offer their input to the Secretary/Treasurer so that he/she can get a tentative budget that is more likely to be closer to the final budget.

Proposed Motion: (Note no action is required; but if so, the following are sample motions.)

I move we schedule a workshop for –insert date and time.

I move we approve the tentative budget presented tonight.

3. FOR POSSIBLE ACTION: DISCUSSION TO APPROVE SALARY INCREASES FOR THE AIRPORT MANAGER AND MAINTENANCE TECHNICIAN. (P. Stotts, T. Rowe)

Staff Summary: Compensation increases will be discussed and/or approved for The Airport Manager and the Maintenance Technician.

This is Member Stotts item request.

Background. NRS 844 authorizes the Authority to hire employees:

“Sec. 9. Board: General powers. The Board may:...

7. Employ a manager of the airport, fiscal advisers, engineers, attorneys and other personnel necessary to the discharge of its duties.” NRS 844, Section 9, subsection 7

<http://www.leg.state.nv.us/SpecialActs/02-AirportAuthorityCarsonCity.html>

The issue raised in this Agenda item, namely of increased salary, is identified in Section 24 of NRS 844:

Sec. 24. Board: Adoption of procedures for hiring, promoting and discharging employees. The Board may adopt procedures, to be administered by the Board, for hiring, promoting and discharging its employees, which must include but are not limited to the following:

1. Employment on the basis of open, publicly announced, competition.
2. Promotions and remuneration on the basis of merit, efficiency, competitive examinations and seniority.
3. Classifications of the positions.
4. The maintenance of lists of eligible candidates for a position.
5. Employment of candidates from the lists in the highest qualified rating.
6. Probationary periods not to exceed 6 months.
7. Disciplinary action, suspension or discharge of employees for cause only with the right of notice and review.
8. Schedules of compensation and increases in pay prepared by the Board.
9. Maintenance of personnel records on all employees.
10. Regulations for hours of work, attendance, holidays, leaves of absence and transfers.
11. Procedures for layoffs, discharge, suspension, discipline and reinstatement.
12. The exemption from the procedures of persons employed for scientific, technical or expert service of a temporary or exceptional character, persons employed on projects paid from the proceeds of bonds issued by the Authority and persons employed for a period of less than 3 months in any 12-month period.
13. Review by the Board, at the request of the employee in question and after notice and public hearing, of any disciplinary action, suspension or discharge of any employee, which may be affirmed, modified or reversed by the Board. Findings of fact by the Board are not subject to review by any court except for illegality or want of jurisdiction.

Under this section, pay raises (ie. remuneration) are based on merit, efficiency, competitive examinations and seniority.

The Airport Manager has submitted a comparison of other airport managers’ salaries that he assembled as support for a raise. Absent information on comparable staff sizes, airport operations, job duties, etc., such comparison has limited value, and even with that limited value, it does not address the standard in NRS 844.

At a prior special meeting held on May 9, 2016 under the provisions of the Open Meeting Law for discipline of a public employee, some members sought to terminate the current Airport Manager. The Manager and his private attorney argued that Sec 24 of NRS 844 controlled as to his employment, and that he could not be fired except as set forth in that section. While there was a difference in opinion on whether he could be fired without cause, the ultimate vote was split with the majority voting not to terminate the Manager.

The discussion during that meeting established the following.

1. The Airport Manager responded to a job announcement for Airport Manager.

2. The Airport Manager was hired on March 23, 2011 as a result of interviews during an Airport Authority meeting.
3. The Airport Manager has never had a performance review.
4. The Airport Manager and his private attorney argued that he can only be fired for cause, and since he had no job criteria, he could not be evaluated, nor fired.
5. A prior Airport Authority Chairman testified that he voted to hire the current Airport Manager and after hiring, he tried to establish job criteria but was unsuccessful in doing so.
6. Some Authority members voiced the opinion that instead of firing him, they should adopt job criteria so that he could be evaluated. (It appears such criteria are still under development.)
7. That same prior Airport Authority Chairman testified that he told Tim at the time of hiring that he would be paid less since he would be able to fly contract jobs on the side.
8. The Airport Manager submitted a written document stating that he understood he could also work flying jobs on a part time basis while working as Airport Manager.
9. The Airport Manager testified that he does in fact work a commercial pilot job in addition to working as Airport Manager.

Given these facts, and the express provisions of NRS 844, a comparison of other salaries at other airports is not sufficient to support an increased salary for the Airport Manager.

This is not to say that he is or is not entitled to a raise, but only that the comparison presented to you is an insufficient basis. Rather, support from a performance review of “merit, efficiency, competitive examinations and seniority” would be a more supportable basis.

My legal recommendation is to develop the job criteria and other items listed in Section 24 of NRS 844; then do performance evaluations.

I. LEGAL COUNSEL’S REPORT (Non-Action Item).

No additional briefing at this time.