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100 N. Carson Street
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January 21, 2021

The Honorable Kate Marshall
Lieutenant Governor of Nevada
101 N. Carson Street, Suite 2
Carson City, Nevada 89701

Re: Powers of Commission on Tourism

Dear Lieutenant Governor Marshall:

On behalf of the Nevada Commission on Tourism (Commission), and in your capacity as its Chair, you have requested an opinion concerning the scope of the Commission's powers under NRS 231.200 and related statutes. More specifically, you have requested an opinion concerning the Commission's authority "to establish the policies and approve the programs and budgets of the Division of Tourism, paying particular attention to the legislative intent and any relevant judicial interpretations regarding [NRS 231.200]." You have also inquired about the "Commission's statutorily mandated duties and responsibilities to oversee and approve the budgets of the Department of Tourism and Cultural Affairs."

In 1983, the Nevada Legislature created the Commission through its enactment of A.B. 391 of the 62nd Session of the Nevada Legislature (A.B. 391). See Act of May 23, 1983, ch. 452, §§ 3-17, 1983 Nev. Stat. 1161-65. Between 1983 and 2011, the Commission was analogous to a department of Nevada state government insofar as it consisted of two divisions, the division of tourism and the division of publications, and was not subordinate to any other departments or agencies of Nevada state government. 1983 Nev. Stat. at 1161, § 3. The Commission's powers were defined by section 6 of A.B. 391, which is currently codified at NRS 231.200. Although chapter 231 of NRS

was amended in 1985 and 2011, the provisions of section 6 have not changed significantly since 1983. As originally enacted, section 6 stated:

The commission on tourism:

1. Shall establish the policies and approve the programs and budgets of the division of tourism and division of publications concerning:

- (a) The promotion of tourism and travel in this state; and

- (b) The publication of Nevada Magazine and other promotional material.

2. May adopt regulations to administer and carry out the policies and programs of the divisions.

3. May from time to time create special advisory committees to advise it on special problems of tourism. Members of special advisory committees, other than members of the commission, may be paid the per diem allowance and travel expenses provided by law, as the budget of the department permits.

1983 Nev. Stat. at 1162.

In 2011, the Nevada Legislature modified the Commission's organizational structure by making it a division within the Department of Tourism and Cultural Affairs (Department). *See* Act of June 16, 2011, ch. 479, 2011 Nev. Stat. 2936, 2937-38, §§ 4-10. This was accomplished via the enactment of S.B. 427 of the 76th Session of the Nevada Legislature (S.B. 427). As a result of S.B. 427, the Commission is currently one of several divisions within the Department. The other divisions include the Division of Tourism, the Division of Museums and History, the Board of Museums and History, the Nevada Indian Commission, the Nevada Arts Council, and the Board of the Nevada Arts Council. *See* NRS 231.167.

Pursuant to NRS 231.200, the Commission is responsible for managing the Division of Tourism according to criteria that are virtually identical to those set forth in section 6 of A.B. 391. The only difference is that the 2011 legislation eliminated the division of publications, which published Nevada Magazine, and transferred that responsibility to the Division of Tourism.

This was accomplished via section 11 of S.B. 427. Section 11 amended NRS 231.200 as follows:

Sec. 11. NRS 231.200 is hereby amended to read as follows:

231.200 The Commission on Tourism:

1. Shall establish the policies and approve the programs and budgets of the Division of Tourism ~~[and Division of Publications]~~ concerning:

(a) The promotion of tourism and travel in this State; and

(b) The publication of Nevada Magazine and other promotional material.

2. May adopt regulations to administer and carry out the policies and programs of ~~[these divisions.]~~ ***the Division of Tourism.***

3. May from time to time create special advisory committees to advise it on special problems of tourism. Members of special advisory committees, other than members of the Commission, may be paid the per diem allowance and travel expenses provided for state officers and employees, as the budget of the Commission permits.

2011 Nev. Stat. at 2938.

Since 2011, the Commission has held the same powers as did the commission on tourism between 1983 and 2011. In other words, there has been no change to the scope of the powers as they were originally described in section 6 of A.B. 391. While the Commission is subordinate to the Department in terms of its organizational structure, see NRS 231.167, the Department's functions are administrative in nature, see NRS 231.220. This means that the Commission has unilateral authority to adopt policies and regulations that guide the Division of Tourism in carrying out the Division's duties and responsibilities as described in NRS 231.260, .270 and .360.

Except for its management of the Division of Tourism, see NRS 231.200, the Commission has no authority, express or implied, to establish the policies and approve the programs and budgets of the Department and

the other divisions within the Department, or to direct their activities. The Commission's powers are only those that pertain to the management of the Division of Tourism because "[a]dministrative agencies have only those powers which the legislature expressly or implicitly delegates." *Clark County v. State, Equal Rights Com'n*, 107 Nev. 489, 492, 813 P.2d 1006, 1007 ((1991) (citing *Andrews v. Nevada State Board of Cosmetology*, 86 Nev. 207, 467 P.2d 96 (1970))). The statutes that govern the Commission and the Division of Tourism contain nothing to suggest that the Commission may exercise management authority over the other co-equal divisions within the Department.

To the extent that the divisions described in NRS 231.167 may have complementary duties and functions, the Director of the Department shall coordinate the activities of the various divisions and assist them to develop mutually agreeable budget and policy proposals. NRS 231.220. Additionally, the Director of the Department has a duty to analyze the effectiveness of plans for tourism, publications, and cultural affairs and their associated expenditures. *Id.* This requires the Director to make judgments of programmatic effectiveness, and budgetary decisions regarding the entirety of the Department.

We hope that the above information is useful to the Commission. Unfortunately, we were unable to locate any case law interpreting NRS 231.200 or related statutes defining the powers of the Commission. If you have questions about specific statutory provisions and how they may apply to real or hypothetical factual scenarios, please feel free to call me at your convenience.

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