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May 22, 2007

Senator Randolph J. Townsend
Senate Chambers

Dear Senator Townsend:

You have asked this office the following questions relating to the tax abatements and tax exemptions enacted by Assembly Bill No. 3 (A.B. 3) of the 22nd Special Session of the Nevada Legislature:

1. Do the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 create any contractual or vested rights with respect to persons who have applied for the tax abatements or exemptions or who have been approved to receive the tax abatements or exemptions?

2. If the Legislature were to amend or repeal the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3, could persons who have applied for the tax abatements or exemptions or who have been approved to receive the tax abatements or exemptions successfully assert the doctrine of estoppel against the state due to their reliance on the existing tax abatements or exemptions?

BACKGROUND

Under the Nevada Constitution, the Legislature is required to provide by law for a uniform and equal rate of assessment and taxation of property, and the Legislature is not permitted to exempt any property from such taxation unless the exemption is expressly authorized by the Nevada Constitution. See Nev. Const. art. 10, § 1; State v. Eastabrook, 3 Nev. 173, 177-78 (1867). At the 1982 General Election, the people of the State of Nevada voted to amend the Nevada Constitution to authorize the Legislature to provide by law for property tax exemptions "to encourage the conservation of energy or the substitution of other sources for fossil sources of energy." Nev. Const. art. 10, § 1(8).

During the 22nd Special Session in 2005, the Legislature enacted A.B. 3 to encourage energy efficiency in construction and renovation of various buildings. See Chapter 2, Statutes of Nevada 2005, 22nd Special Session, at p. 68. In accordance with the authority granted to the Legislature by the Nevada Constitution, A.B. 3 included provisions providing for property tax abatements to promote the conservation of energy through the construction and renovation of energy efficient or "green" buildings. In particular, section 6 of A.B. 3 provides for a partial abatement from real property taxes for property which has a building or other structure that meets certain standards for energy efficiency. See Chapter 2, Statutes of Nevada 2005, 22nd Special Session, at p. 71. Section 6 of A.B. 3, which is codified as NRS 361.0775, provides:

> 1. The Commission on Economic Development shall grant a partial abatement from the tax imposed on real property by this chapter for property which has a building or other structure that is certified at or meets the equivalent of the silver level or higher by a person authorized to grant such certification in accordance with the Leadership in Energy and Environmental Design Green Building Rating System or its equivalent, as adopted by the Director of the Office of Energy pursuant to NRS 701.217.
>
> 2. The partial abatement must be for a duration of not more than 10 years and must not exceed 50 percent of the taxes on real property payable each year pursuant to this chapter.
>
> 3. The Commission on Economic Development shall establish by regulation the qualifications and methods to determine eligibility for the abatement.
>
> 4. The Commission on Economic Development shall immediately forward a certificate of eligibility for the abatement to:
>
> (a) The Department of Taxation;
> (b) The Nevada Tax Commission;
> (c) The county treasurer; and
> (d) The county assessor.

In addition to the property tax abatements, A.B. 3 also included provisions providing for sales and use tax exemptions for a limited period. Specifically, section 7 of A.B. 3, which expired by limitation on December 31, 2005, amended NRS 374.307 and provided for an exemption from various sales and use taxes for products or materials used in the construction of a building that meets certain standards for energy efficiency. See Chapter 2, Statutes of Nevada 2005, 22nd Special Session, at pp. 71-72. In pertinent part, section 7 of A.B. 3 provided:

> 1. There are exempted from the taxes imposed by this chapter the gross receipts from the sale of, and the storage, use or other consumption in this State of, any:

* * *

(d) Products or materials used in the construction of a building if the building is certified or will, when complete, meet the requirements to be certified at or meet the equivalent of the silver level or higher in accordance with the Leadership in Energy and Environmental Design Green Building Rating System.

Following the enactment of A.B. 3, several developers and businesses submitted applications or otherwise made requests to receive the tax abatements or exemptions enacted by A.B. 3. Based on the information provided to this office, some of those applications have been approved, and the applicants have received certificates establishing their eligibility for the tax abatements or exemptions enacted by A.B. 3. It is our understanding that most of the other applications for the tax abatements or exemptions remain pending.

DISCUSSION

1. Do the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 create any contractual or vested rights with respect to persons who have applied for the tax abatements or exemptions or who have been approved to receive the tax abatements or exemptions?

In answering your question, we are guided by several well-established principles of constitutional law. First, the Nevada Legislature "is free to enact any law provided it is not clearly prohibited by some provision of the Constitution of the United States or the Nevada Constitution." Koscot Interplanetary, Inc. v. Draney, 90 Nev. 450, 456 (1974). Once a law is enacted, the Legislature also remains free to amend or repeal the law as it sees fit, subject of course to constitutional limitations. See Damus v. Clark County, 93 Nev. 512, 519 (1977). Second, a prior state legislature may not bind a subsequent state legislature unless the prior state legislature takes legislative action which clearly and unmistakably establishes between the state and another party enforceable rights that are protected by the United States or Nevada Constitution. See United States v. Winstar Corp., 518 U.S. 839, 871-80 (1996) (plurality op.); Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 135 (1810). If a statute does not create any constitutionally-protected rights, the power of a subsequent state legislature to amend or repeal the statute is virtually unlimited. Id.

Accordingly, the threshold issue is whether the enactment of a tax abatement or exemption by statute establishes any constitutionally-protected rights. The power to tax is one of the essential attributes of sovereignty, and it is presumed that in enacting tax abatements and exemptions, one legislature does not intend to create private contractual or vested rights which prohibit successive legislatures from changing the tax policy of the state. See East Saginaw Salt Mfg. Co. v. East Saginaw, 80 U.S. (13 Wall.) 373, 376-79 (1872); Tucker v. Ferguson, 89 U.S. (22 Wall.) 527, 575 (1875); West Wis. Ry. Co. v.

Board of Supervisors, 93 U.S. 595, 595-99 (1876); Welch v. Cook, 97 U.S. 541, 542-45 (1878); Union Passenger Ry. Co. v. Philadelphia, 101 U.S. 528, 532-40 (1880); Grand Lodge v. New Orleans, 166 U.S. 143, 146-50 (1897); Wisconsin & Mich. Ry. Co. v. Powers, 191 U.S. 379, 385-87 (1903). This well-established presumption is based on the fundamental proposition that the principal function of the tax law is to make state tax policy, not to make private contracts. Id. As explained by the United States Supreme Court, "[p]olicies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body." National R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co., 470 U.S. 451, 466 (1985). Thus, unless the Legislature has expressed a clear and unequivocal intent to bind the State of Nevada contractually when enacting a tax abatement or exemption, the continuance of the tax abatement or exemption "is a matter of public policy only; and those who rely on it must base their reliance on the free and voluntary good faith of the legislature." East Saginaw Salt Mfg. Co. v. East Saginaw, 80 U.S. (13 Wall.) 373, 378-79 (1872).

In considering whether a state legislature intends to bind the state contractually when enacting tax abatements and exemptions, courts generally distinguish between two types of legislation: (1) special legislative acts which grant tax abatements and exemptions to private corporations and organizations through charters and franchises; and (2) general laws which grant tax abatements and exemptions to any person who complies with the requirements of the general law. See Powers v. Detroit, Grand Haven & Milwaukee Ry. Co., 201 U.S. 543, 556-57 (1906); Pearsall v. Great N. Ry. Co., 161 U.S. 646, 659-68 (1896); 71 Am. Jur. 2d State and Local Taxation §§ 247-53 (2001); 1 Thomas M. Cooley, Constitutional Limitations 248, 571 (8th ed. 1927). As will be explained in more detail below, special legislative acts granting tax abatements and exemptions to private corporations or organizations through charters and franchises may create contractual or vested rights which are constitutionally protected from impairment under the Contract Clause if the intent to bind the state has been expressed in clear and unequivocal terms.[1] In contrast, general laws granting tax abatements and exemptions typically do not create contractual or vested rights in persons who comply with the requirements of the tax abatements and exemptions. Consequently, such general laws may be amended or repealed by the state legislature at any time, regardless of whether any person has incurred expense to comply with the requirements of the tax abatements and exemptions.

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[1] The Contract Clause of the United States Constitution and the Contract Clause of the Nevada Constitution prohibit the state from passing any law that impairs the obligation of contracts. U.S. Const. art. I, § 10; Nev. Const. art. 1, § 15. The Nevada Supreme Court has held that the Contract Clause of the Nevada Constitution has the same meaning and effect as the Contract Clause of the United States Constitution. See Holloway v. Barrett, 87 Nev. 385, 392 (1971). Therefore, the legal analysis is the same for both constitutional provisions.

During the 1800s, to promote economic growth and development, it was a common practice for state legislatures to enact special legislative acts granting charters and franchises to private corporations, such as banks, railroads and road, bridge and ferry companies. See Valencia Energy Co. v. Arizona Dep't of Revenue, 959 P.2d 1256, 1263 (Ariz. 1998); Stewart E. Sterk & Elizabeth E. Goldman, Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations, 1991 Wis. L. Rev. 1301, 1317-21 (1991). State legislatures also granted such charters and franchises to private colleges, universities and charitable organizations. Id. These charters and franchises often included favorable tax abatements and exemptions that were granted for specific periods or for an unlimited duration. Id.

Eventually, as economic conditions changed, subsequent state legislatures looked less favorably on these charters and franchises and enacted legislation to amend or repeal the tax abatements and exemptions included in the special legislative acts. In a series of cases from the 1800s, the United States Supreme Court held that the special legislative acts granting the tax abatements and exemptions created contractual or vested rights which were constitutionally protected from impairment under the Contract Clause. As a result, subsequent state legislatures were prohibited from amending or repealing the tax abatements and exemptions, unless the power to amend or repeal had been expressly reserved in the charter or franchise or under the laws in effect when the charter or franchise was granted. See New Jersey v. Wilson, 11 U.S. (7 Cranch) 164, 165-67 (1812); Gordon v. Appeal Tax Court, 44 U.S. (3 How.) 133, 144-50 (1845); Piqua Branch of State Bank of Ohio v. Knoop, 57 U.S. (16 How.) 369, 376-92 (1853); Home of the Friendless v. Rouse, 75 U.S. (8 Wall.) 430, 435-39 (1869); Washington Univ. v Rouse, 75 U.S. (8 Wall.) 439, 439-41 (1869); Farrington v. Tennessee, 95 U.S. 679, 681-94 (1877); Citizens' Sav. Bank of Owensboro v. Owensboro, 173 U.S. 636, 644-55 (1899).

During this same period, the United States Supreme Court also considered many cases involving general laws granting tax abatements and exemptions to any person who complied with the requirements of the general law. In these cases, the Court held that the general laws did not create contractual or vested rights in the persons who complied with the requirements of the tax abatements and exemptions. Rather, the general laws only established the state's tax policy, which always remained subject to revision and repeal by a subsequent state legislature. Consequently, the Court held that a subsequent state legislature had the power to amend or repeal the tax abatements and exemptions at any time, regardless of whether any person had already incurred expense to comply with the requirements of the tax abatements and exemptions. See East Saginaw Salt Mfg. Co. v. East Saginaw, 80 U.S. (13 Wall.) 373, 376-79 (1872); Tucker v. Ferguson, 89 U.S. (22 Wall.) 527, 575 (1875); West Wis. Ry. Co. v. Board of Supervisors, 93 U.S. 595, 595-99 (1876); Welch v. Cook, 97 U.S. 541, 542-45 (1878); Union Passenger Ry. Co. v. Philadelphia, 101 U.S. 528, 532-40 (1880); Grand Lodge v. New Orleans, 166 U.S. 143, 146-50 (1897); Wisconsin & Mich. Ry. Co. v. Powers, 191 U.S. 379, 385-87 (1903).

For example, in East Saginaw Salt Manufacturing Co. v. East Saginaw, 80 U.S. (13 Wall.) 373 (1872), the Michigan Legislature, to encourage the production of salt in the state, enacted a general law which provided that all property used to bore for and manufacture salt was exempt from taxation. The original legislation did not place a limit on the duration of the tax exemption. The original legislation also provided that the state would pay a bounty of 10 cents for each bushel of salt that a company manufactured from salt brine obtained from boring wells in the state if the company manufactured at least 5,000 bushels of salt from such salt brine. As a result of the original legislation, the East Saginaw Salt Manufacturing Company (Salt Company) was organized as a corporation under Michigan law and spent considerable sums of money drilling wells to extract salt brine and constructing facilities to manufacture the extracted salt brine into salt. Two years after enacting the original legislation, the Michigan Legislature amended the general law to limit the duration of the tax exemption to 5 years from the organization of the company. The amendments also provided that the total bounty paid to each company by the state could not exceed $5,000. The Salt Company challenged the validity of the amendments under the Contract Clause. The Salt Company argued that it had relied in good faith upon the benefits promised by the state legislature and that by investing money and resources to bore for and manufacture salt in accordance with the original legislation, the company had obtained a vested right in the original tax exemption which could not be taken away by a subsequent legislature without violating the Contract Clause.

The United States Supreme Court rejected the Salt Company's argument. 80 U.S. at 376-79. The Court held that the Salt Company did not have a contractual or vested right in the tax exemption because the original legislation was a general law whose benefits were offered to any company which complied with the requirements of the law. Thus, as with any other provision of general law, the tax exemption was subject to amendment or repeal by a subsequent legislature. Id. The Court explained that:

> In its nature it is a general law, regulative of the internal economy of the State, and as much subject [to] repeal and alteration as [any other] law . . . Its continuance is a matter of public policy only; and those who rely on it must base their reliance on the free and voluntary good faith of the legislature. . . . General encouragement, held out to all persons indiscriminately, to engage in a particular trade or manufacture, whether such encouragement be in the shape of bounties or drawbacks, or other advantage, are always under the legislative control, and may be discontinued at any time.

Id. at 378-79.

A similar result was reached in Wisconsin & Michigan Railway Company v. Powers, 191 U.S. 379 (1903). In that case, the Michigan Legislature enacted a general law providing for the taxation of all railroads, but the general law exempted from taxation for 10 years any railroad built and operated north of the 44th parallel of latitude with the

purpose of encouraging the development of infrastructure in the northern part of the state. In response to the legislation, the Wisconsin and Michigan Railway Company (Railway Company) built and operated such a railroad at considerable expense. Four years after enacting the original legislation, the Michigan Legislature repealed the tax exemption, and the Railway Company argued that the repeal violated the Contract Clause.

The United States Supreme Court held that the Railway Company did not have a contractual or vested right in the tax exemption. 191 U.S. at 385-87. Although the clear purpose of the state legislature in enacting the tax exemption was to encourage railroad building in the northern part of the state, the Court held that such encouragement through tax incentives does not amount to a covenant that the general law will not be amended or repealed. Id. As stated by the Court:

> No doubt the State expected to encourage railroad building, and the railroad builders expected the encouragement, but the two things are not set against each other in terms of bargain. . . . The broad ground in a case like this is that, in view of the subject matter, the legislature is not making promises, but framing a scheme of public revenue and public improvement. In announcing its policy and providing for carrying it out it may open a chance for benefits to those who comply with its conditions, but it does not address them, and therefor it makes no promise to them. It simply indicates a course of conduct to be pursued, until circumstances or its views of policy change. It would be quite intolerable if parties not expressly addressed were to be allowed to set up a contract on the strength of their interest in and action on the faith of a statute, merely because their interest was obvious and their action likely, on the face of the law.

Id. at 387 (citation omitted).

Based on this line of Supreme Court cases, state courts have consistently held that a person does not have a contractual or vested right in tax abatements and exemptions enacted through a general law, even when the person has invested considerable amounts of money and resources to comply with the requirements of the tax abatements and exemptions. Consequently, tax abatements and exemptions enacted through a general law always remain subject to amendment or repeal by a subsequent state legislature. See, e.g., La-Z-Boy Chair Co. v. Director of Econ. Dev., 983 S.W.2d 523, 523-26 (Mo. 1999); Opinion of the Justices, 598 So. 2d 1362, 1364-67 (Ala. 1992); Herrick v. Lindley, 391 N.E.2d 729, 731-33 (Ohio 1979); Daytona Beach Racing & Recreational Facilities Dist. v. Volusia County, 372 So. 2d 419, 420 (Fla. 1979); In re Skidmore, 387 N.E.2d 290, 290-93 (Ill. 1979); Kimball-Tyler Co. v. Mayor of Baltimore, 133 A.2d 433, 439 (Md. 1957); Grand Lodge Hall Ass'n v. Moore, 70 N.E.2d 19, 19-23 (Ind. 1946).

Applying the foregoing legal principles to the tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3, we believe those sections do not contain any of the hallmarks of legislation which creates contractual or vested rights constitutionally protected from impairment under the Contract Clause. On their face, sections 6 and 7 of A.B. 3 are not special legislative acts which grant tax abatements and exemptions to specific corporations or organizations through a charter or franchise. Instead, sections 6 and 7 of A.B. 3 are laws of general applicability whose tax abatements and exemptions are offered to any person who complies with the requirements of those sections. The purpose of enacting tax abatements and exemptions through general laws is to make state tax policy, not to make contracts, and "[t]he presumption is that such a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise." Dodge v. Board of Education, 302 U.S. 74, 79 (1937). Accordingly, it must be presumed that in enacting the tax abatements and exemptions in sections 6 and 7 of A.B. 3, the Legislature was making public policy, not making contracts.

Furthermore, there is no language in sections 6 and 7 of A.B. 3 that stands as a clear and unequivocal expression of the Legislature's intent to bind the state contractually when a person applies for or is approved to receive the tax abatements and exemptions enacted by those sections. Because the taxing power is vital to the functions of government, the intention of the Legislature to bind or surrender the taxing power through contract "must be clear beyond a reasonable doubt. It cannot be inferred from uncertain phrases or ambiguous terms." Hoge v. Richmond & Danville R.R. Co., 99 U.S. 348, 355 (1879). Therefore, even when there are doubts as to the intent of the Legislature in enacting tax abatements and exemptions, those doubts must be resolved against a finding that the Legislature intended the tax abatements and exemptions to create contractual or vested rights in persons complying with the requirements of the law. See Tucker v. Ferguson, 89 U.S. (22 Wall.) 527, 575 (1875); Union Passenger Ry. Co. v. Philadelphia, 101 U.S. 528, 532, 538-39 (1880).

In the case of sections 6 and 7 of A.B. 3, there is no language in those sections which indicates that the Legislature intended to offer the tax abatements and exemptions as irrevocable contracts to persons who complied with the requirements of those sections. Instead, the only reasonable construction of the language is that the tax abatements and exemptions were intended to be ordinary tax incentives subject to amendment or repeal by the Legislature as public policy requires. In the words of the United States Supreme Court:

> [T]he exemptions in question were gratuities offered by the State, without any element of a contract. There was no assurance or intimation that they were intended to be irrevocable, or that the laws in question should not be at all times subject to modification or repeal in like manner as other legislation. If a different intent had existed, it would doubtless have been clearly manifested by the language employed.

West Wis. Ry. Co. v. Board of Supervisors, 93 U.S. 595, 597-98 (1876). Thus, in the absence of a clear and unequivocal intent to bind the State of Nevada contractually, it must be presumed that the tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 do not create contractual or vested rights constitutionally protected from impairment under the Contract Clause.

This conclusion is not affected by the fact that some persons may have invested considerable amounts of money, time and resources to apply and qualify for the tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3. Every person is presumed to know the law and, when A.B. 3 was enacted, it was a well-settled principle of law that legislation like A.B. 3 was subject to amendment or repeal by subsequent legislatures. See, e.g., East Saginaw Salt Mfg. Co. v. East Saginaw, 80 U.S. (13 Wall.) 373, 376-79 (1872); Welch v. Cook, 97 U.S. 541, 542-45 (1878); Wisconsin & Mich. Ry. Co. v. Powers, 191 U.S. 379, 385-87 (1903). Therefore, any person who committed money, time and resources to apply and qualify for the tax abatements and exemptions enacted by A.B. 3 was "bound to take notice of the fact that the legislature was at liberty to repeal the act at any time." Grand Lodge v. New Orleans, 166 U.S. 143, 148 (1897); Welch v. Cook, 97 U.S. 541, 545 (1878).

Finally, as a general rule of constitutional law, where one possible interpretation of a statute would raise serious constitutional problems, a court will generally reject that interpretation of the statute if it is fairly possible for the court to construe the statute in an alternative manner that avoids the constitutional problems. See INS v. St. Cyr, 533 U.S. 289, 299-300 (2001). Because the Nevada Constitution contains provisions intended to prevent the enactment of legislation granting special and irrevocable rights and privileges to private corporations, we believe any interpretation of sections 6 and 7 of A.B. 3 which results in a finding that private corporations had obtained special and irrevocable rights and privileges to tax abatements and exemptions would raise serious constitutional problems under the Nevada Constitution and would be disfavored by the courts.

As discussed previously, in a series of cases from the 1800s, the United States Supreme Court held that special legislation granting tax abatements and exemptions to private corporations could have the effect of creating contractual or vested rights protected from impairment under the Contract Clause. In response to those cases, several states adopted state constitutional provisions which were intended to restrict state legislatures from enacting legislation granting special and irrevocable rights and privileges to private corporations. See Valencia Energy Co. v. Arizona Dep't of Revenue, 959 P.2d 1256, 1263 (Ariz. 1998); Stewart E. Sterk & Elizabeth E. Goldman, Controlling Legislative Shortsightedness: The Effectiveness of Constitutional Debt Limitations, 1991 Wis. L. Rev. 1301, 1317-21 (1991). One of the primary purposes of adopting these state constitutional restrictions was to prevent the enactment of tax abatements and exemptions that would become irrevocable under the Contract Clause. See Valencia Energy Co. v. Arizona Dep't

of Revenue, 959 P.2d 1256, 1263-64 (Ariz. 1998). Thus, the main goal of such a restriction is to prohibit "the Legislature and state agencies from alienating the Legislature's fundamental power to tax." Id. at 1264 (emphasis omitted).

Like those other state constitutions, the Nevada Constitution contains provisions which were intended by the Framers to prevent the enactment of legislation granting special and irrevocable rights and privileges to private corporations. Specifically, Section 1 of Article 8 of the Nevada Constitution provides that "[t]he Legislature shall pass no Special Act in any manner relating to corporate powers except for Municipal purposes; but corporations may be formed under general laws; and all such laws may from time to time, be altered or repealed." According to statements made by the delegates to the State Constitutional Convention, the purpose of this section is to prohibit the Legislature from granting "special favors and valuable privileges" like monopolies and tax benefits to specific private corporations. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 63-65 (1866). Based on the discussion of the delegates, Section 1 of Article 8 was added to the Nevada Constitution as a direct response to abusive legislative practices in other states where legislatures had granted private corporations special and irrevocable rights and privileges through charters and franchises. Id.

On its face, Section 1 of Article 8 mandates that any legislation relating to corporate powers must be enacted through general laws. See State ex rel. Keith v. Dayton & Virginia Toll-Road Co., 10 Nev. 155, 161 (1875); In re Scott, 53 Nev. 24, 35-36 (1930); Western Realty Co. v. City of Reno, 63 Nev. 330, 350 (1946). Section 1 of Article 8 also ensures that those general laws do not create special and irrevocable rights and privileges for private corporations by expressly stating that "all such laws may from time to time, be altered or repealed." In interpreting a similar section in the California Constitution of 1849 (which served as the model for the Nevada Constitution), the United States Supreme Court determined that by reserving the power to amend or repeal legislation relating to corporations, the state was preserving its sovereign power over such corporations and was ensuring that its legislation would not give private corporations special and irrevocable rights and privileges that were protected from impairment under the Contract Clause. See Stanislaus County v. San Joaquin & King's River Canal & Irrigation Co., 192 U.S. 201, 211-13 (1904); American Toll Bridge Co. v. Railroad Comm'n, 83 P.2d 1, 6-7 (Cal. 1938).

In light of this constitutional background, we believe it would not be reasonable to interpret sections 6 and 7 of A.B. 3 as granting private corporations any special and irrevocable rights and privileges to the tax abatements and exemptions enacted by those sections. Instead, we believe the only reasonable interpretation of sections 6 and 7 of A.B. 3 is that those sections are laws of general applicability which are subject to amendment and repeal by the Legislature and which do not create any special and irrevocable rights and privileges that are protected from impairment under the Contract Clause.

In conclusion, based on long-standing precedent from the United States Supreme Court, it is the opinion of this office that the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 do not create any contractual or vested rights with respect to persons who have applied for the tax abatements or exemptions or who have been approved to receive the tax abatements or exemptions. Therefore, it is the opinion of this office that the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 may be amended or repealed by the Legislature at any time without violating the Contract Clause, regardless of whether any person has incurred expense to comply with the requirements of the existing tax abatements or exemptions.

2. If the Legislature were to amend or repeal the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3, could persons who have applied for the tax abatements or exemptions or who have been approved to receive the tax abatements or exemptions successfully assert the doctrine of estoppel against the state due to their reliance on the existing tax abatements or exemptions?

The doctrine of estoppel is a judicial doctrine that sounds in equity and allows a court to grant equitable relief in order to avoid manifest injustice and hardship to an injured party who has reasonably and justifiably relied on the wrongful conduct of another person to the injured party's detriment. See Pellegrini v. State, 117 Nev. 860, 877-78 (2001); Foley v. Kennedy, 110 Nev. 1295, 1301-02 (1994); Southern Nev. Mem'l Hosp. v. State, 101 Nev. 387, 390-93 (1985); Nevada Pub. Employees Ret. Bd. v. Byrne, 96 Nev. 276, 280 (1980). As a general rule, the doctrine of estoppel may not be applied to prevent the state from exercising its sovereign powers. Id. However, in certain rare and limited circumstances, a state agency that provides a person with inaccurate information or erroneous advice in the performance of its administrative functions may be estopped from changing its position at a later date with regard to that person if the person reasonably and justifiably relies on the inaccurate information or erroneous advice to his detriment. Id.; see also Michael A. Rosenhouse, Annotation, Estoppel of State or Local Government in Tax Matters, 21 A.L.R. 4th 573 (1983).

Even though the doctrine of estoppel may be applied against a state agency in certain rare and limited circumstances when it is performing its administrative functions, we have not found any authority to support the conclusion that the state may be estopped from enforcing new or revised laws against a person simply because the person has already taken actions in reliance on the prior law. See Pellegrini v. State, 117 Nev. 860, 877-78 (2001). Indeed, if the doctrine of estoppel could be applied against the state under such ordinary circumstances, it would be nearly impossible for the state to enforce new or revised laws against existing industries. Accordingly, it is a well-established rule that application of the doctrine of estoppel is always subordinate to the sovereign power of the Legislature to amend or repeal laws to protect the public interest. See Valencia Energy Co.

v. Arizona Dep't of Revenue, 959 P.2d 1256, 1269-70 (Ariz. 1998). As explained by the Arizona Supreme Court:

> [T]he general rule [is] that estoppel may apply against the state only when the public interest will not be unduly damaged and when its application will not substantially and adversely affect the exercise of governmental powers. This rule requires prudence in the application of estoppel, recognizing that the state's solvency is of paramount importance and that equity will not sacrifice the fundamental welfare of the whole community to accomplish justice for the individual.

Id. at 1269.

Furthermore, to successfully assert the doctrine of estoppel against the state, a person must rely on the state's acts and the person's reliance on those acts must be justifiable and reasonable under the circumstances. See Pellegrini v. State, 117 Nev. 860, 877-78 (2001); Valencia Energy Co. v. Arizona Dep't of Revenue, 959 P.2d 1256, 1268 (Ariz. 1998). We believe it would be patently unjustifiable and unreasonable for a person to rely on the continued existence of tax abatements or exemptions enacted by general laws given the centuries-old principle that such general laws are always subject to amendment or repeal by a subsequent legislature. Simply put, it would be naïve and ill-advised for a person to assume that existing tax laws will not change. Thus, if any person committed money, time and resources to apply and qualify for the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3, the person was "bound to take notice of the fact that the legislature was at liberty to repeal the act at any time." Grand Lodge v. New Orleans, 166 U.S. 143, 148 (1897); Welch v. Cook, 97 U.S. 541, 545 (1878).

As a result, we believe a person's reliance on the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 would not entitle the person to assert the doctrine of estoppel against the state or prevent the Legislature from exercising its sovereign power to amend or repeal laws to protect the public interest. Therefore, it is the opinion of this office that if the Legislature were to amend or repeal the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3, persons who have applied for the tax abatements or exemptions or who have been approved to receive the tax abatements or exemptions could not successfully assert the doctrine of estoppel against the state due to their reliance on the existing tax abatements or exemptions.

CONCLUSION

Based on long-standing precedent from the United States Supreme Court, it is the opinion of this office that the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 do not create any contractual or vested rights with respect to persons who have applied for the existing tax abatements or exemptions or who have been approved to

receive the existing tax abatements or exemptions. Therefore, it is the opinion of this office that the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3 may be amended or repealed by the Legislature at any time without violating the Contract Clause, regardless of whether any person has incurred expense to comply with the requirements of the existing tax abatements or exemptions. Furthermore, because application of the doctrine of estoppel is always subordinate to the sovereign power of the Legislature to amend or repeal laws to protect the public interest, it is also the opinion of this office that if the Legislature were to amend or repeal the existing tax abatements and exemptions enacted by sections 6 and 7 of A.B. 3, persons who have applied for the existing tax abatements or exemptions or who have been approved to receive the existing tax abatements or exemptions could not successfully assert the doctrine of estoppel against the state due to their reliance on the existing tax abatements or exemptions.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
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By _____
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