142 Nev., Advance Opinion 57

FILED
Aug 20 2026
ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA EX REL. THE NEVADA LEGISLATURE, Appellant, vs. ELKO COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, EX REL. ITS BOARD OF ELKO COUNTY COMMISSIONERS, Respondent.	No. 90340

Appeal from a district court order declaring unconstitutional a local or special law governing property taxes. First Judicial District Court, Carson City; Kristin Luis, Judge.

Affirmed.

Legislative Counsel Bureau Legal Division and Kevin C. Powers, General Counsel, Carson City,
for Appellant.

Tyler J. Ingram, District Attorney, and Gillian L. Jones, Deputy District Attorney, Elko County,
for Respondent.

BEFORE THE SUPREME COURT, EN BANC.

OPINION

By the Court, STIGLICH, J.:

In this case, we consider the constitutionality of a recently enacted law, Assembly Bill 519. Two sections of A.B. 519 apply only to counties with a population between 52,500 and 57,500. 2023 Nev. Stat., ch. 393, §§ 2, 8, at 2301-02, 2306. Elko County, the only county with a population within that range, sought declaratory relief deeming those sections unconstitutional. The district court granted summary judgment in favor of Elko County. The State, through the Nevada Legislature, appeals.[1] After review, we agree that the two relevant sections of A.B. 519 are unconstitutional. Accordingly, we affirm the district court's order.

FACTS AND PROCEDURAL HISTORY

The Nevada Legislature passed A.B. 519, which promotes school district capital projects, in 2023. 2023 Nev. Stat., ch. 393, § 1, at 2301. Three sections are relevant here. Section 2 requires counties with populations between 52,500 and 57,500 to levy a property tax between 1 cent and 25 cents per $100 of assessed property value to fund school capital projects within the county. 2023 Nev. Stat., ch. 393, § 2, at 2301-02. Section 8 institutes a default 25-cent property tax for counties falling within Section 2 that failed to levy a compliant tax by June 30, 2024. 2023 Nev. Stat., ch. 393, § 8, at 2306. And Section 3 authorizes, but does not require, counties with populations below 100,000 but outside the 52,500 to 57,500 range to levy a property tax to support school capital projects at their discretion.

[1]In proceedings below, the named State defendants included the governor and Department of Taxation as well as the legislature. Only the legislature chose to appeal.

2023 Nev. Stat., ch. 393, § 3, at 2302-03.[2] At the time of the 2020 census, Elko County had a population of 53,702. *See* NRS 0.050 (defining population as "the number of people in a specified area as determined by the last preceding national decennial census"). The census reveals no other county with a population that falls within the range of Section 2.

After A.B. 519 was passed into law, Elko County filed a complaint for declaratory relief, seeking a judgment that Sections 2 and 8 are unconstitutional because they apply to a local or special subset of the state, rather than to the entire state generally. Elko County contended that as it was the only county that fell within the designated population range, the legislature overstepped its authority by passing Sections 2 and 8. The district court granted summary judgment for Elko County, finding those sections to be unconstitutional local or special laws. Independently, the court found that Sections 2 and 8 violate Article 4, Section 25 of the Nevada Constitution, which requires a "uniform" system of county and township government throughout the state. The district court then severed Sections 2, 8, and a sentence in Section 3 that refers to Section 2, such that the remainder of A.B. 519 survived the lawsuit.[3] The State appeals.

DISCUSSION

At issue in this case is whether Sections 2 and 8 of A.B. 519 are constitutional. Resolving this inquiry begins with determining whether Sections 2 and 8 are local or special laws. Because we conclude they are,

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[2]Section 2 is codified at NRS 387.3289, Section 3 is codified at NRS 387.3342, and Section 8 is not codified.

[3]We note that the district court's order contains a typographical error. Although the district court ruled for plaintiff Elko County, the title indicated that summary judgment was granted in favor of the State defendants.

we then determine whether they are nonetheless constitutionally permissible.[4] We conclude that they are not.

We review orders granting summary judgment de novo. *Cain v. Price*, 134 Nev. 193, 195, 415 P.3d 25, 28 (2018). When reviewing the constitutionality of a statute, we "presume that it is valid." *Sisolak v. Polymer80, Inc.*, 140 Nev. 285, 288, 546 P.3d 819, 825 (2024).

Sections 2 and 8 are local or special laws

The State concedes that Section 8 is a local or special law but asserts that Section 2 is a general law. It points to the prospective population classification—that is, a population classification that remains open such that counties can enter or leave it as their populations change—as proof that it is not special or local. Elko County retorts that the population classifications in Section 2 are not rationally related to the purpose of the law and that the legislative history shows an intent to target Elko County specifically.

Nevada distinguishes general laws from local and special laws. A general law "is a[ ] universal rule that regards the whole community." *Youngs v. Hall*, 9 Nev. 212, 218 (1874) (citing 1 William Blackstone, Commentaries *86). In contrast, local and special laws apply to only a subset of the state.[5] Although a general law requires a "universal rule," *id.*

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[4]Both parties agree that if we affirm summary judgment, Sections 2 and 8 should be severed from the rest of A.B. 519. In light of this agreement, we do not consider other remedies.

[5]"A law is local if it operates over a particular locality instead of over the whole territory of the State," *Att'y Gen. v. Gypsum Res., LLC*, 129 Nev. 23, 28, 294 P.3d 404, 407 (2013) (citation modified), and special laws pertain only "to a part of a class as opposed to all of a class," *Damus v. Clark County*, 93 Nev. 512, 516, 569 P.2d 933, 935 (1977). We will not dwell on the distinction between local or special laws, as it is not material to our analysis.

at 218 (citation omitted), a law is nonetheless general if "it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction," *Colman v. Utah State Land Bd.*, 795 P.2d 622, 636 (Utah 1990) (citation omitted); *see also Clean Water Coal. v. The M Resort, LLC*, 127 Nev. 301, 311, 255 P.3d 247, 254 (2011) (citing *Colman* for this proposition). We have held that laws distinguishing between counties based on population parameters are permissible general laws, *Reid v. Woofter*, 88 Nev. 378, 380, 498 P.2d 361, 362 (1972), so long as those laws are prospective and are not "confined in their operation to the existing state of facts at the time of their passage," *State v. Donovan*, 20 Nev. 75, 78, 15 P. 783, 784 (1887). Such population classifications must be "rationally related to the subject matter and must not create odious or absurd distinctions." *City of Fernley v. State, Dep't of Tax'n*, 132 Nev. 32, 47, 366 P.3d 699, 710 (2016) (citation modified). When engaging in this review, we are not limited to "the reasons enunciated for enacting a statute; if any rational basis exists, then a statute" passes muster. *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 520, 217 P.3d 546, 559 (2009).

Here, the population classification in Section 2 is permissibly prospective: the classification creates a county population range between 52,500 and 57,500 and leaves that range open indefinitely.[6] *See Clark County ex rel. Cnty. Comm'rs v. City of Las Vegas ex rel. Bd. of City Comm'rs*, 97 Nev. 260, 263, 628 P.2d 1120, 1122 (1981) ("If the classification applies prospectively to all counties which might come within its designated class, it is neither local nor special."). Thus, Section 2 is a general law so long as

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[6]As the State concedes, Section 8 is not general because it requires compliance by June 30, 2024, closing the class in contravention of *Donovan*. *See* 20 Nev. at 78, 15 P. at 784.

its population classification is rationally related to school capital projects. *See City of Fernley*, 132 Nev. at 47, 366 P.3d at 710.

We conclude that the population classification of Section 2 is not rationally related to the purpose of A.B. 519 and instead creates a prohibited odious or absurd distinction. The sponsor of the bill described the purpose of A.B. 519 as "support[ing] capital projects for Nevada school districts." Hearing on A.B. 519 Before the Assemb. Ways and Means Comm., 82d Leg. (Nev., May 31, 2023) (testimony of Assemblymember Daniele Monroe-Moreno). As part of that support, Section 2 requires counties with populations between 52,500 and 57,500 to levy a property tax to fund such capital projects. In its briefs, the State proffers that "the Legislature could rationally believe" that rural counties with populations above 52,500 would face greater "demands on the county school district." Similarly, the State suggests that it would want to mandate property taxes to ensure that school capital projects are not "impeded or jeopardized by any potentially conflicting local or provincial interests." As to the upper limit, the State suggests that once a county exceeds a population of 57,500 and "has been collecting the local property taxes over several years, the Legislature could rationally believe that it is no longer necessary . . . to mandate such local property taxes."

Notwithstanding these justifications for the population range, the State fails to explain how the narrow range of 5,000 people is related to the goal of supporting school capital projects. In the abstract, a mandatory property tax might be rationally related to raising funds to maintain the state's school districts. Likewise, a mandate depending on population could be rationally related to the idea that counties of larger sizes require a lighter touch and should have greater discretion over their property taxes. But neither of these propositions support a state mandate for only those counties within a population range of 5,000 people. There must be a rational relationship between the State's policy objectives and its particular population classifications, not just between the objectives and population classifications in general. After review, we conclude that the State's stated goals are not rationally related to the narrow population range in this case.

County-level population numbers as of the 2020 census are instructive as to how finely Section 2 was tailored in its upper and lower bounds to include only Elko County. Douglas County and Nye County both had populations beneath the limit in Section 2, with populations of 49,488 and 51,591, respectively. Carson City, population 58,639, and Lyon County, population 59,235, were just above the upper threshold in Section 2. Thus, for Section 2 to apply only to Elko County, the State had to create a population range between 51,591 and 58,639 that included 53,702. The bill's population range suggests that the legislature singled out Elko County rather than addressed school capital projects in smaller counties generally.

A.B. 519's legislative history confirms that the 52,500-to-57,500 population range is "odious or absurd" because it targets Elko County and not counties based on general size. The bill's sponsor described Section 2 as "requir[ing] the Elko County Board of Commissioners to levy a tax." Hearing on A.B. 519 Before the Assemb. Ways and Means Comm., 82d Leg. (Nev., May 31, 2023) (testimony of Assemblymember Daniele Monroe-Moreno). Another supporter said specifically that Section 2 applies "only to one county by population; that happens to be Elko County—I will say it right here on the record." *Id.* (testimony of William Adler on behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation). After A.B. 519 passed in the Assembly, its sponsor again represented, this time to the

Senate, that the bill "requires the Elko County Board of Commissioners to levy a [property] tax." Hearing on A.B. 519 Before the Sen. Fin. Comm., 82d Leg. (Nev., June 4, 2023) (testimony of Assemblymember Daniele Monroe-Moreno). When a senator asked about the 52,500 and 57,500 population limits, that same supporter of the bill said explicitly that "Section 2 of A.B. 519 is exclusively directed toward Elko County as it contains a population amount corresponding with Elko County." *Id.* (testimony of Will Adler of Silver State Government Relations). This testimony shows that the legislature did not derive the 5,000-person range from any rationale related to improving school districts; instead, this range was used as a proxy for Elko County, using ostensibly neutral population metrics.

We conclude that the population range in Section 2 is not rationally related to A.B. 519's purpose. The State offers no rational reason—and, indeed, we discern none—as to why only counties of 52,500 to 57,500 people should lose their autonomy over implementing a property tax. And the legislative record is clear that this distinction is not based upon county size in general but instead aimed at Elko County. We accordingly hold that Section 2 is a local or special law.

Sections 2 and 8 violate Article 4, Section 20 of the Nevada Constitution

We employ a two-part test to determine whether a local or special law is unconstitutional. First, we look at whether the law falls within the scope of Article 4, Section 20 of the Nevada Constitution. *Clean Water Coal.*, 127 Nev. at 312, 255 P.3d at 255. Article 4, Section 20 enumerates several categories of action that are per se unconstitutional. If the law is not specifically prohibited, then we engage in the second inquiry and examine whether "a general law [could have been] made applicable," per Article 4, Section 21.

Elko County argues that Sections 2 and 8 "regulate county business" and assess taxes for county purposes and are thus prohibited by Article 4, Section 20. The State retorts that Sections 2 and 8 only *relate* to county business, as opposed to "alter[ing] the county's fundamental political organization," and thus do not regulate county business. The State also contends that Sections 2 and 8 do not tell counties how to assess this tax and thus fall outside the scope of Article 4, Section 20. Finally, the State argues that this court has previously approved such tax statutes.

Article 4, Section 20 prohibits the legislature from passing special or local laws "[f]or the assessment and collection of taxes for state, county, and township purposes" or "[r]egulating county and township business." A law affects a county's ability to assess or collect taxes if it prescribes "a different method of either assessment or collection than provided by the revenue laws of general application throughout the state." *City of Reno v. Washoe County*, 94 Nev. 327, 334-35, 580 P.2d 460, 465 (1978) (citation modified). Assessment of taxes refers to "ascertain[ing] the value of the taxable property, and determin[ing] the exact amount which each parcel or individual is liable for." *Gibson v. Mason*, 5 Nev. 283, 304 (1869). Collection refers to the method of receiving tax payments. *Id.* at 305. "County business," in turn, "may be defined as covering almost everything that concerns the administration of the county government." *McDonald v. Beemer*, 67 Nev. 419, 425, 220 P.2d 217, 220 (1950) (quoting *Singleton v. Eureka County*, 22 Nev. 91, 35 P. 833, 836 (1894) (Bigelow, J., concurring)). "[W]hether a law regulates or affects county business hinges on two criteria: (1) whether the challenged law governs a single item or project rather than multiple items or projects, and (2) whether the law's effect is temporary rather than permanent." *Att'y Gen. v. Gypsum Res., LLC*, 129 Nev. 23, 30, 294 P.3d 404, 408 (2013).

Contrary to Elko County's assertions, Sections 2 and 8 do not violate Article 4, Section 20's prohibition against assessing or collecting taxes. Section 2 requires counties to levy a tax without specifying how that tax must be assessed or collected and is thus permissible. *See Gibson*, 5 Nev. at 304-05 (distinguishing levying taxes from assessing or collecting taxes). Likewise, Section 8 automatically levies a tax against any covered counties that fail to implement a tax on their own but does not dictate the means of assessment or require collection of that tax by a particular method.

We conclude, however, that Sections 2 and 8 unconstitutionally regulate county business. Section 2 requires a county to institute a property tax for as long as a county remains within the population range of 52,500 to 57,500. The proceeds from such a tax are to be used for school capital projects in general; there is no single project that the funds are to be used for. Section 2 has a permanent effect and governs multiple projects and therefore regulates county business. Similarly, Section 8 institutes a permanent property tax that applies only to general capital projects and thus violates Article 4, Section 20.

The State's arguments against this conclusion are unpersuasive. First, the State relies on *Town of Pahrump v. County of Nye*, 105 Nev. 227, 229, 773 P.2d 1224, 1225 (1989), for the proposition that "the law must significantly alter the county's fundamental political organization" to constitute unconstitutional regulation of county business. But this quoted language is not the standard; rather, *Gypsum Resources* lays out the two criteria for analysis: scope and permanence. 129 Nev. at 30, 294 P.3d at 408.

Second, the State cites several cases in which we purportedly upheld long-term local taxes that affect more than one project to argue that Section 2 should similarly be upheld. In *Dotta v. Hesson*, we held that legislation permitting bonds for construction of a high school in Wells did not violate Article 4, Section 20. 38 Nev. 1, 4, 143 P. 305, 305-06 (1914). Likewise, *State v. Lytton* approved as constitutional a statute concerning funds for a new jail and courthouse in Elko County. 31 Nev. 67, 68-69, 99 P. 855, 856 (1909). Lastly, we held in *Washoe County Water Conservation District v. Beemer* that an act authorizing Washoe County to issue bonds to pay for a series of proposed improvements along the Truckee River was constitutional. 56 Nev. 104, 111, 121, 45 P.2d 779, 780, 783-84 (1935). According to the State, each of these cases demonstrate that we have sanctioned taxes for permanent projects.

We conclude otherwise. Although, as the State notes, the projects themselves were "permanent in nature," the relevant inquiry is whether the *appropriations* are limited in duration. The *Dotta* high school and *Lytton* jail and courthouse were permanent in the sense that the buildings persisted, but the bonds paying for them were not, since the county was no longer authorized to issue the bonds once the projects were complete. And as *Washoe County Conservation District* addressed a single set of river improvements, the law authorized the issuance of a limited number of bonds to facilitate the completion of a single project. 56 Nev. at 111, 45 P.2d at 780. The laws in these cases sharply contrast with Sections 2 and 8, which are neither limited to a single project nor temporally limited. We thus conclude that because Sections 2 and 8 impermissibly regulate county business, they violate Article 4, Section 20 of the Nevada Constitution.[7]

CONCLUSION

The legislature has broad power to pass laws, but this power is not unfettered. *See* Nev. Const. art. 4, § 1. The legislature is prohibited from passing special or local laws that "[r]egulat[e] county and township business." Nev. Const. art. 4, § 20. Sections 2 and 8 violate this limitation on the legislative branch. We therefore hold that these sections are unconstitutional and affirm the district court's summary judgment.

Stiglich, J.

We concur:

Herndon, C.J.

Pickering, J.

Parraguirre, J.

Bell, J.

Cadish, J.

Lee, J.

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[7]Given this conclusion, we decline to address whether Sections 2 and 8 of A.B. 519 violate Sections 21 or 25 of the Nevada Constitution.