El Dorado County Grand Jury 2011-2012

South Lake Tahoe Ice Arena

Case Number GJ-11-008

Reason for Report

The El Dorado County Grand Jury has looked into the privatization of the City of South Lake Tahoe's Ice Arena, which was built with voter approved tax exempt bonds. Through interviews and requests of public records, policies and procedures were discovered that cloud the transparency the public should expect of a government agency.

Background

In the summer of 2010, the City of South Lake Tahoe entertained the idea of leasing the Ice Arena to a private contractor to be managed for a profit to the City. As a result of a Request for Proposal (RFP), a contract (operations management agreement) was drawn up and offered to private contractors.

The South Lake Tahoe Recreation Facilities Joint Powers Authority (JPA), was informed that the signed contract may not be compliant to the bond.

On July 25, 2011, bond counsel confirmed to City staff that the contract was not in compliance to the tax free bonds. To conform to the tax free bonds, the City of South Lake Tahoe attached a side letter **(Attachment 1)** that amended the contract (agreement) to conform to the tax free bonds. An independent contractor took control of the Ice Arena on September 19, 2011. On January 20, 2012, the JPA Board recommended that the tax free bonds be refinanced as taxable bonds.

Methodology

Documents Reviewed:

- Bond Measure S **(Attachment 2)**
- California Proposition 218 **(Attachment 3)**
- Community Facilities District No. 2000-1,
  - South Lake Tahoe Recreation Facilities Joint Powers Authority Series 2001 Special Tax Bond
- El Dorado County District 5 Supervisor email
- El Dorado County Grand Jury 2009-2010
  - City of South Lake Tahoe City Council – GJ-09-008
  - Responses to GJ-09-008
- South Lake Tahoe City Attorney email

South Lake Tahoe City Business Plan 2011-2012
South Lake Tahoe City Council
Protocols
Assignments
South Lake Tahoe City Manager email
South Lake Tahoe Ice Arena Management and Operations Agreement
South Lake Tahoe Ice Arena Side Letter Agreement **(Attachment 1)**
South Lake Tahoe Recreation Facilities Staff email

Interviews:

South Lake Tahoe City Council Members (Subpoenaed)

Facts/Findings

1. California Proposition 218 has clarified that the governing body cannot overrule the property owner vote. Once an assessment is created it may be repealed or reduced by popular vote.

2. On September 19, 2000, voters approved Measure S, authorizing the issuance of tax free bonds, in an amount not to exceed $6,500,000, to finance the acquisition, construction, equipping and improvement of certain public recreational facilities and certain improvements to be owned by the City and the Resort Improvement District (collectively, the "Facilities") and the levy of the special tax. The bonds are paid by a Special Tax levy terminating in fiscal year 2030-31.

3. The South Lake Tahoe City Council created the illusion of taxpayer approval on this special tax without voter approval by converting the tax status of the tax free bonds to taxable bonds and converting the public facility to a private facility.

4. South Lake Tahoe City Council members do not consistently attach a date to their signatures when signing documents.

5. By failing to respond to their email communications, the South Lake Tahoe City Council hampered the Grand Jury's investigation.

6. The JPA staff alerted the South Lake Tahoe City Attorney that the contract the City was considering was possibly not compliant to the non-taxable bond, which was confirmed by outside JPA counsel on August 19, 2011. JPA staff did not alert the JPA Board about this matter until after the signing of the agreement on August 23, 2011.

7. The City of South Lake Tahoe Council and Staff failed to contact outside counsel on bond issues when constructing the South Lake Tahoe Ice Arena Management and Operations Agreement.

Recommendations

1. The Grand Jury recommends that the City of South Lake Tahoe and the JPA hold a special election to allow property owners who voted for a publicly financed Ice Arena (whose proceeds were to be placed in the General Fund), to change this vote to a publicly financed Ice Arena (whose majority proceeds are to provide income to a private contractor).

2. The Grand Jury recommends that the South Lake Tahoe City Council members and South Lake Tahoe City employees include dates when signing City documents.

3. The Grand Jury recommends that the City Council members should acknowledge and respond to all e-mails personally addressed to …@cityofslt.us.

4. The Grand Jury recommends that the JPA staff inform the JPA Board of Directors of all bond issues when they arise.

5. The Grand Jury recommends that the South Lake Tahoe City Council establish an objective approach to stipulating when outside counsel will be consulted when constructing a contract.

Responses

Reponses to both the findings and recommendations in this report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:
The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to:

El Dorado County Board of Supervisors
South Lake Tahoe City Council
South Lake Tahoe City Manager
South Lake Tahoe Recreation Facilities Joint Powers Authority

SIDE LETTER TO MANAGEMENT AND OPERATIONS AGREEMENT

This Side Letter is to the South Lake Tahoe Ice Arena Management and Operations Agreement, dated August 2, 2011 by and between, the City of South Lake Tahoe, a municipal corporation ("City") and Tahoe Sports and Entertainment ("TCE" or "Concessionaire").

The parties desire to enter into this Side Letter to the Management and Operations Agreement as follows:

1. Section 1. Term shall be amended as follows:

The Term of this Agreement is amended pending the refinancing of the Community Facilities District No. 2000-1 of the South Lake Tahoe Recreation Facilities Joint Powers Authority Special Tax Bonds ("Bonds") for the South Tahoe Ice Arena to taxable bonds to state the following:

"Notwithstanding any other provision of this Agreement and pursuant to the restriction of Section 141 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.141-3, the City may without penalty or cause terminate this Agreement upon 50 days prior written notice to Concessionaire."

Effective upon the Bonds being refinanced to taxable bonds the above language shall be null and void. In the event that the Bonds cannot be refinanced on or before February 1, 2012, the Management and Operations Agreement shall be null and void.

This Agreement is granted for a term of ten (10) years beginning August 1, 2011 and terminating September 30, 2021 (the 'Term'). At any time during the Term of this Agreement, Concessionaire shall have the right to terminate this Agreement upon one-hundred eighty (180) days prior written notice to City.

At any time during the Term of this Agreement, City shall have the right to terminate this Agreement upon ninety (90) days' prior written notice to Concessionaire, for reasons of default as set forth in Section 35 by Concessionaire.

All other provisions of the South Tahoe Ice Arena Management and Operations Agreement shall remain in full force and effect.

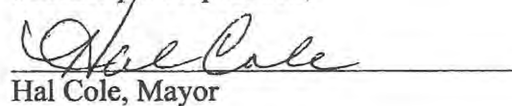
CENTRAL RECORDS
FILE No.: [illegible]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

TAHOE SPORTS ENTERTAINMENT, INC.

By: ______________________
Parley Van Oleson, CEO

CITY OF SOUTH LAKE TAHOE,
a municipal corporation,



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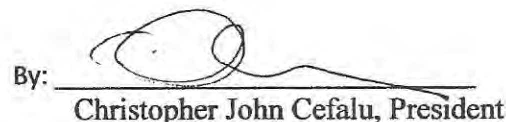
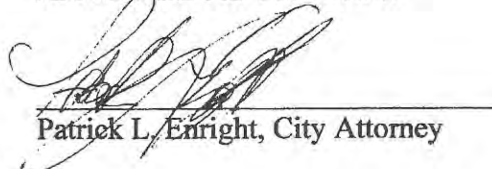
Hal Cole, Mayor

TAHOE SPORTS ENTERTAINMENT, INC.



By: ______________________
Christopher John Cefalu, President

APPROVED AS TO FORM:



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Patrick L. Enright, City Attorney

ATTEST:

____
Susan Alessi, City Clerk

CARD A

SIDE 1

SIDE 2

TOP

A

OFFICIAL BALLOT

SPECIAL
BOND ELECTION

COUNTY OF EL DORADO

TUESDAY, SEPTEMBER 19, 2000

This ballot stub shall be removed
and retained by the voter.

MEASURE SUBMITTED TO THE VOTERS

DISTRICT

COMMUNITY FACILITIES DISTRICT NO. 2000-1 OF THE SOUTH LAKE TAHOE RECREATION FACILITIES JOINT POWERS AUTHORITY BOND MEASURE S

S To maintain new bike trails, acquire, construct and equip athletic fields and an ice rink, upgrade Paradise Park facilities, qualify for $12.5 million in County/State grants, and fund reserves shall (i) Community Facilities District No. 2000-1 of the South Lake Tahoe Recreation Facilities Joint Powers Authority issue $6,500,000 of bonds (ii) levy special taxes to pay for such facilities, for maintenance thereof, and incidental expenses, including debt service on such bonds; (iii) establish the District's annual appropriations limit at $6,500,000, all as provided in Resolutions 05 and 06 of the Authority?

YES	+
NO	+

09-101A

A

Sample Ballot

09-SB401

(Attachment 3)

California Proposition 218

RIGHT TO VOTE ON TAXES ACT

SECTION 1. TITLE. This act shall be known and may be cited as the "Right to Vote on Taxes Act."

SECTION 2. FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent.

SECTION 3. VOTER APPROVAL FOR LOCAL TAX LEVIES.
Article XIII C is added to the California Constitution to read:

ARTICLE XIII C

SECTION 1. Definitions. As used in this article:
(a) "General tax" means any tax imposed for general governmental purposes.
(b) "Local government" means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.
(c) "Special district" means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.
(d) "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

SEC. 2. Local Government Tax Limitation. Notwithstanding any other provision of this Constitution:
(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.
(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is

imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

SEC. 3. Initiative Power for Local Taxes, Assessments, Fees and Charges. Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

SECTION 4. ASSESSMENT AND PROPERTY RELATED FEE REFORM.

Article XIII D is added to the California Constitution to read:

ARTICLE XIII D

SECTION 1. Application. Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

(a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.

(b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.

(c) Affect existing laws relating to the imposition of timber yield taxes.

SEC. 2. Definitions. As used in this article:

(a) ''Agency" means any local government as defined in subdivision (b) of Section 1 of Article XIII C.

(b) ''Assessment" means any levy or charge upon real property by an agency

for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax."

(c) "Capital cost" means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) "District" means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) "Maintenance and operation expenses" means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) "Property-related service" means a public service having a direct relationship to property ownership.

(i) "Special benefit" means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute "special benefit."

SEC. 3. Property Taxes, Assessments, Fees and Charges Limited. (a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

SEC. 4. Procedures and Requirements for All Assessments. (a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel

shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the

public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

SEC. 5. Effective Date. Pursuant to subdivision (a) of Section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in Section 4.

SEC. 6. Property Related Fees and Charges. (a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee

or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of

elections under this subdivision.
(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

SECTION 5. LIBERAL CONSTRUCTION. The provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.

SECTION 6. SEVERABILITY. If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.