

*Reconstituted*

# RÍO NUEVO

*Downtown Initiative*

## **FOR IMMEDIATE RELEASE**

### **Rio Nuevo Multipurpose Facilities District**

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## **RIO NUEVO RELEASES LEGAL OPINION**

**TUCSON, ARIZONA -- July 23, 2012** The Rio Nuevo Board has released a legal opinion issued by legislative counsel and forwarded to Senate President Steve Pierce that was requested by Rio Nuevo in an effort to clarify the authority of the District to invest in projects other than the convention center and convention center hotel. The 2009 legislation required that the Rio Nuevo board issue a Notice to Proceed on a hotel and convention center project before spending any public monies on anything else other than day to day expenses.

Such a Notice was issued and amended in October of 2010, although the project was never initiated. The drafters of the legislation have reviewed the Notice and minutes, and have concluded that a proper notice was issued in October 2010 (see attached opinion).

"We are grateful that legislative counsel has responded so quickly and are consulting with our attorneys on how this opinion should be incorporated into Rio Nuevo planning for future projects," said Fletcher McCusker, Rio Nuevo Chairman.

"While the opinion supports flexibility in the 'go forward' authority of the District, we know that we cannot act unilaterally. The city is required to match Rio Nuevo funds and, by law, has to agree on any and all Rio Nuevo projects. This opinion also doesn't change our economic development priorities: The TCC, a headquarters hotel, and initiating projects on the Westside," McCusker added. "Furthermore the Rio Nuevo board has committed significant financial and auditing resources to a forensic examination of the district's expenses during the time it was city controlled and that remains our primary focus," McCusker concluded.

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# ARIZONA LEGISLATIVE COUNCIL

## MEMO

July 18, 2012

**TO:** President Steve Pierce

**FROM:** Ken Behringer  
General Counsel

**RE:** Rio Nuevo; Notice to Proceed (R-50-143)

### BACKGROUND

At a meeting on October 10, 2010, the board of directors of the Rio Nuevo Multipurpose Facilities District adopted the following motion:

The Rio Nuevo Multipurpose Facilities District hereby issues a notice to proceed to the City of Tucson that will be good for 90 days pursuant to ARS 48-2404(B) on a proposed hotel convention center and garage project with the following parameters . . . .<sup>1</sup>

The motion then set out thirteen requirements for the project. At its meeting on October 20, 2010, the Board revised the notice to proceed by adopting changes to some of the thirteen requirements. The City of Tucson apparently later rejected the project.

### QUESTION

Did the Board's actions comply with Arizona Revised Statutes (A.R.S.) section 48-4204, subsection B?

### ANSWER

The Board's actions appear to have met the statutory requirement that it issue a notice to proceed for a hotel and convention center located on the multipurpose facility site before allowing the expanded use of tax monies generated in the district.

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<sup>1</sup> The original motion apparently inadvertently omitted a comma after "hotel", because the revision described the project as a "hotel, convention center and garage project".

## **DISCUSSION**

A multipurpose facility district is a type of county stadium district that is formed pursuant to and governed by A.R.S. title 48, chapter 26. If approved by the voters, a multipurpose facility district may levy a transaction privilege tax or other taxes or charges as specified in statute. A.R.S. section 48-4237. Revenues generated by these taxes and charges may only be used for the components of a multipurpose facility that are owned by the district or that are publicly owned. These monies may only be used for four purposes specified in statute "until a notice to proceed is issued for a hotel and convention center located on the multipurpose facility site". A.R.S. section 48-2404, subsection B.

Language in a statute is given its ordinary meaning unless it appears from the context or otherwise that a different meaning is intended. *Southern Pacific Company v. Maricopa County*, 56 Ariz. 247 (1940). The statutes do not prescribe any special meaning to the condition for expanded use of the tax and charge monies, so the language must be given its ordinary meaning.

The Board clearly intended to comply with the notice requirement of A.R.S. section 48-2404, subsection B, because the language of the motion mirrors the statutory language. By the original and the revised motions, the Board did issue a notice to proceed for a hotel and convention center on the multipurpose facility site.

The fact that the notice was good for only 90 days does not negate the fact that the notice was issued. The statute does not specify any particular requirements or limitations in the notice. Also, nothing in the notice indicates that it was not given in good faith.

The statute does not require that the hotel and convention center project be started or completed for the expanded use of the tax and charge monies to come into effect. Therefore, the fact that the City of Tucson rejected the notice does not negate the effect of the notice.

## **CONCLUSION**

The Board is not limited to using the tax and charge monies to the four purposes specified by statute, because it has issued a notice to proceed for a hotel and convention center project. The Board may use these monies for any costs of the components of the multipurpose facility that are owned by the district or that are publicly owned.

cc: Greg Jernigan