

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 **BILL BERRUM, WASHOE COUNTY**
4 **TREASURER,**

Case No. 54947

Electronically Filed
Jul 13 2010 03:18 p.m.
Tracie K. Lindeman

5 Appellant,

6 v.

7 **CHARLES OTTO, et al.,**

8 Respondents.
9 _____/

10 **VILLAGE LEAGUE TO SAVE INCLINE**
11 **ASSETS, INC., et. al.,**

Case No. 56030

12 Appellants,

13 v.

14 **STATE OF NEVADA, et. al.,**

15 Respondents.
16 _____/

17 **WASHOE COUNTY,**

Case No. 56253

18 Appellant,

19 v.

20 **STATE, STATE BOARD OF**
21 **EQUALIZATION, CERTAIN TAX**
22 **PAYERS, et. al.,**

23 Respondents.
24 _____/

25 **REPLY TO STATE OF NEVADA’S RESPONSE TO WASHOE COUNTY’S**
26 **MOTION TO CONSOLIDATE CASES AND TO CERTAIN TAX PAYERS’ POINTS**
AND AUTHORITIES IN OPPOSITION TO MOTION TO CONSOLIDATE

Come now, all Washoe County parties in the above-referenced three cases now pending before the Supreme Court, with this Reply to the State of Nevada’s “Response to Washoe County’s Motion to Consolidate Cases Pending Before the Supreme Court and/or For an Appeal Conference” and to certain taxpayers’ “Points and Authorities in Opposition to Motion to

1 Consolidate Cases Pending Before the Court and/or For an Appeal Conference.” This Reply is
2 filed on behalf of all Washoe County parties in the above-referenced cases by Washoe County
3 District Attorney Richard A. Gammick and by Chief Deputy District Attorney David Creekman.
4 This Reply is authorized by Nevada Rule of Appellate Procedure (NRAP) 27(a)(4) and is
5 supported by the following Statement of Points and Authorities, along with all the documents,
6 papers, pleadings, transcripts and electronic records on file with the Court in the above-referenced
7 three cases.

8 **STATEMENT OF POINTS AND AUTHORITIES**

9 In their Response/Opposition, the State of Nevada and certain taxpayers contend that
10 “Nevada law does not provide for the consolidation of Washoe County Requests” and that “Rule
11 3(b)(2) is the Court’s authority for consolidation.” Both the State and certain taxpayers cite to
12 NRAP 3 as limiting consolidation of cases on appeal to certain types of cases. But NRAP 3
13 applies to the consolidation of cases in which there is a single district court judgment or order, and
14 it ignores the Supreme Court’s power to consolidate and hear together several cases where they all
15 grow out of the same, or similar, transactions and depend upon similar facts, laws or principles.
16 In this regard, an appellate court may consolidate and hear together several cases which have been
17 brought before it for review where they all grow out of the same transaction and depend on the
18 same facts or principles, at least if the consolidation appears to be the most convenient,
19 expeditious, or inexpensive course for the parties. McClure v. Donovan, 82 Cal. App.2d 668, 186
20 P.2d 720 (1947) (appeal of decision annulling marriage and attorney’s fees questions so
21 interrelated as to warrant consolidation). In the employment context, an appeal dealing with the
22 issue of unemployment benefits awarded to a former employee may be consolidated with an
23 appeal in a separate matter dealing with the question of whether the employee’s termination from
24 employment was proper. Tombigbee River Valley Water Management Dist. v. Mississippi
25 Employment Sec. Com’n., 909 So. 2d 1064 (Miss. 2005). A court of appeals has the inherent
26 power to consider together pending cases which have grown out of the same cause and are

1 between the same parties, if the ends of justice in the administration of the law demand it.

2 Louisville & N.R. Co. v. Paul's Adm'r., 314 Ky. 473, 235 S.W.2d 787 (1950) (although
3 Kentucky's courts had "no specific rule with reference to consolidating cases or hearing them
4 together, ... it is often done" under the court's inherent powers). Even if the court's rules do not
5 expressly permit the consolidation of appeals, multiple appeals may be combined into a single
6 record, so long as papers for each appeal are physically separated from those for other appeals.
7 Meyer v. Doyle Chevrolet, Inc., 234 A.D.2d 1016, 651 N.Y.S.2d 769 (1996).

8 Cases which have not been consolidated or ordered to be heard together in the lower court
9 may also be considered together on appeal where the record in each cases discloses that the matter
10 in dispute is common and that similar questions are involved. Holthoff v. State Bank & Trust Co
11 of Wellston, Mo., 208 Ark. 307, 186 W.W.2d 162 (1945) (three cases, all involving drainage
12 district assessments could be considered together, although never formally consolidated);
13 Alleghany Corp. v. Aledbaran Corp., 173 Md. 472, 196 A. 418 (1938). The right or power to
14 consolidate cases in an appellate court is not affected by the fact that the several cases have been
15 brought up by different remedies or types of proceedings. Fitzgerald v. Dr. Pepper Co., 48
16 S.W.2d 479 (Tex.Civ.App. Dallas 1932).

17 The propriety of consolidating these cases depends upon the perspective taken by the
18 Court on these cases. Contrary to the positions taken by the State of Nevada and certain
19 taxpayers, each of whom desire to view these cases narrowly, and without particular reference to
20 each other case, it is Washoe County's belief that these cases must be viewed in the broadest of
21 contexts. From Washoe County's perspective, each of these cases involves the consideration of
22 the functions and responsibilities of the State Board of Equalization, whether in the equalization
23 context or in its roll as an appellate body from decisions of the County Boards of Equalization, as
24 those responsibilities were clearly set forth by this Court in State, State Board of Equalization v.
25 Barta, 124 Nev. 58, 188 P.3d 1092 (2008). Admittedly, each of these cases arrived before this
26 Court in a different procedural posture, and arrived before this Court from a different District

1 Court decision. But it is undeniable that they all involve consideration of the same fundamental
2 issue which arises from the same “uniform and equal” provision of Nevada’s Constitution, at
3 Article 10, Section 1. It is also undeniable that they each ultimately surround the same taxable
4 property in Incline Village and Crystal Bay, Nevada, that they all involve the same underlying
5 statutory scheme found at NRS chapter 361, that they all involve the same Assessor and that,
6 ultimately, they may each involve questions of tax refund availability and liability. This Incline
7 Village/Crystal Bay litigation has been going on in a piecemeal, disjointed case-by-case basis for
8 far too long now --- since 2003, in fact, in the first of these cases which Washoe County seeks to
9 consolidate. It is time for this Court to take control of this litigation and to provide the parties,
10 and all Nevadans, with some guidance and certainty in implementing this important provision of
11 Nevada’s Constitution. Absent such a consolidated approach, Washoe County foresees a
12 continuing patchwork approach to the issues arising in these cases, one which only leaves more
13 questions unanswered than answered, as has historically occurred with respect to all the Incline
14 Village/Crystal Bay tax litigation which has come before Nevada’s courts since 2003.¹

15
16 ¹ Washoe County’s position favoring consolidation is especially apparent considering the
17 following list of cases, each of which arises from property tax disputes in Incline Village/Crystal Bay,
18 Nevada, and each of which has been filed only since 2003.

19 **A. Pending and prior proceedings in this court.**

- 20 1. State of Nevada ex rel. State Board of Equalization v. Bakst, 122 Nev. 1403, 148 P.3d 717 (2006)
- 21 2. State of Nevada ex rel. State Board of Equalization v. Barta, 124 Nev. ___, 188 P.3d 1092 (2008)
- 22 3. Village League to Save Incline Assets, Inc., et. al. v. State of Nevada ex. rel. State Board of
23 Equalization et. al., 124 Nev. ___, 194 P.3d 1254 (2008)
- 24 4. Village League to Save Incline Assets, Inc. v. State of Nevada ex. rel. Department of Taxation, et. al.,
25 Case No. 43441. Order Affirming in Part, Reversing in Part and Remanding, was entered March 19,
26 2009,
5. Marvin, et. al. v. Fitch, et. al., 126 Nev. Adv. Op. 18, entered May 27, 2010
6. Otto, et. al. v. 1st Judicial District Court, et. al., Case No. 55357. Unpublished Order Denying Petition
for a Writ of Prohibition entered April 9, 2010.
7. The three presently pending matters related to residential real property taxes at Incline Village/Crystal
Bay to which this Motion to Consolidate applies:
 - A. Berrum v. Otto, et. al., Case No. 54947.
 - B. Village League to Save Incline Assets, Inc. v. State of Nevada ex. rel. State Board of
Equalization, et. al., Case No. 56030.
 - C. Washoe County v. State, State Board of Equalization, Certain Tax Payers, et. al., Case No. 56253

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 13th day of July, 2010.

RICHARD GAMMICK
Washoe County District Attorney

By /s/ DAVID C. CREEKMAN
DAVID CREEKMAN
Chief Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700
ATTORNEYS FOR APPELLANT

B. In the First Judicial District Court of the State of Nevada:

1. Village League to Save Incline Assets, Inc., et. al. v. State of Nevada ex rel. State Board of Equalization, et. al., Case No. CV05-01451, no final disposition.
2. Village League to Save Incline Assets, Inc., et. al. v. State of Nevada ex rel. State Board of Equalization, et. al., Case No. 07-0C-01720-1B, no final disposition (consolidated with following case).
3. Harris, et. al. v. State of Nevada ex rel. State Board of Equalization, et. al., Case No. 08-0C-00032-1B, no final disposition.
4. Ingemanson, et. al. v. State of Nevada, ex rel. State Board of Equalization, et. al., Case No. 09-0C00332-1B, no final disposition (consolidated with following case).
5. Field, et. al. v. State of Nevada, ex rel. State Board of Equalization, et. al., Case No. 10-0C-00015-1B, no final disposition.
6. Washoe County v. State of Nevada, et. al., Case No. 09-0C-00494-1B, dismiss May 24, 2010 (this appeal).

C. In the Second Judicial District Court of the State of Nevada:

1. Village League to Save Incline Assets, Inc. et. al. v. State of Nevada ex rel. State Board of Equalization, et. al., Case No. CV03-06922 (on appeal to Supreme Court as Case No. 56030).
2. Village League to Save Incline Assets, Inc. et. al. v. State of Nevada ex rel. State Board of Equalization, et. al., Case No. CV08-02132, no final disposition.
3. Village League to Save Incline Assets, Inc. et. al. v. State of Nevada ex rel. Nevada Tax Commission and State Board of Equalization, et. al., Case No. CV08-01894, no final disposition.
4. Otto, et. al. V. Berrum, Case No. CV08-02534, mandamus granted October 23, 2009 (on appeal to Supreme Court as Case No. 54947).
5. Anderson, et. al. v. State of Nevada, et. al., Case No. CV10-00311, no final disposition.

D. In the United State Court for the District of Nevada:

1. Lowe, et. al. v. Washoe County, et. al., Case No. 3:08-CV-00217-KJD-RAM, dismissed March 24, 2009, appealed to Ninth Circuit.

E. In the Ninth Circuit Court of Appeals:

1. Lowe, et. al. v. Washoe County, et. al., Case No. 09-15759, no final disposition.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on July 13, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

- Suellen Fulstone, Esq.
Counsel for Respondents
- Dennis Belcourt, Deputy Attorney General
- Deonne Contine, Deputy Attorney General
Counsel for State Board of Equalization
- Nicholas Frey, Settlement Judge
- Laurie Yott, Settlement Judge

Dated this 13th day of July, 2010.

/S/ MICHELLE FOSTER
MICHELLE FOSTER