

BOARD OF REGENTS

BRIEFING PAPER

1. **AGENDA ITEM TITLE:** A Resolution Delegating Authority for Litigation Decisions

MEETING DATE: May 23, 2024

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

Consistent with the Board of Regents' *Bylaws*, Article III, Section 3 and NRS 241.0357, this agenda item requests the Board adopt a resolution delegating authority to make litigation decisions to the Chancellor, after consultation with the Board Chair and consistent with the advice of the Chief General Counsel.

The Board of Regents, Chancellor, and Chief General Counsel each have authority and responsibility regarding claims, litigation and other contested matters involving the Board of Regents and its officers and employees. While the Board has inherent authority to delegate its authority and responsibility regarding such matters pursuant to the Board's *Bylaws*, NRS 241 provides authority to delegate litigation decisions to the Chair or to the Chancellor. (See NRS 241.0357).

Several Nevada public bodies have adopted resolutions (attached) to delegate litigation decisions to executive leadership. The reasons for such delegations include, but are not limited to, timing and strategy considerations. With respect to timing, litigation deadlines rarely coincide with regularly scheduled public meetings and may not permit time to comply with the public meeting notice requirements in Nevada Open Meeting Law. Public bodies are also disadvantaged when required to publicly announce litigation strategy and decisions in public meetings.

On April 22, 2022, the Board delegated litigation authority for the *Ballas/Ostrander* matter to the Chair "after consultation with and approval by the Chancellor ... and System General Counsel." (See attached relevant minutes). This delegation, as we have learned over time, is not optimal for the following reasons:

- 1) it could be interpreted to require "approval" by counsel when the role of counsel is to "advise" rather than "approve" administrative decisions; and
- 2) it "delegates" authority to the Chair and "approval" by the Chancellor, which creates confusion as to the authority delegated.

Considering these points, the delegation could be better articulated as a delegation *to* the Chancellor *after* consultation with the Chair and *consistent* with the advice of counsel.

For the reasons set forth herein, this agenda item requests the Board adopt a resolution delegating authority to make litigation decisions "to the Chancellor, after consultation with the Board Chair and consistent with the advice of the Chief General Counsel."

This request is consistent with the Board's *Bylaws* and NRS 241.0357.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Vice Chancellor & Chief General Counsel James Martines will present, for possible action, a resolution delegating authority to make litigation decisions to the Chancellor, after consultation with the Chair of the Board of Regents and consistent with the advice of the Chief General Counsel.

4. IMPETUS (WHY NOW?):

An increase in litigation and recent trends in public litigation management has caused NSHE to revisit the way in which it manages litigation decisions. Current policy also requires certain litigation decisions and strategy to be publicly announced prior to implementation, which could damage litigation effectiveness.

5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase access to higher education)
- Success (Improve student success)
- Close Institutional Performance Gaps
- Workforce (Meet workforce needs in Nevada)
- Research (Increase solutions-focused research)
- Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)

X Not Applicable to NSHE Strategic Plan Goals

6. INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

N/A

7. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- NRS 241.0357 permits public bodies to delegate litigation decisions to executive leadership.
- The reasons for such delegations include timing and strategy considerations.
- Litigation deadlines rarely coincide with regularly scheduled public meetings that required notice under Nevada Open Meeting Law.
- Public bodies are disadvantaged when required to publicly announce litigation strategy and decisions.
- Several public bodies in Nevada have adopted similar resolutions.

8. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

N/A

9. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

The Board could take no action, which would require litigation decisions to be voted on by the Board in duly noticed open and public meetings

10. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:

Approve.

11. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Bylaws, Art. III, Sec. 3
- Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes _____ No X
Explain: _____

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION DELEGATING AUTHORITY TO MAKE LITIGATION DECISIONS TO THE CHANCELLOR, AFTER CONSULTATION WITH THE CHAIR OF THE BOARD AND CONSISTENT WITH THE ADVICE OF THE CHIEF GENERAL COUNSEL.

WHEREAS Article 11, Section 4 of the Nevada State Constitution and Chapter 396 of the Nevada Revised Statutes provide that the Board of Regents oversees the management of the Nevada System of Higher Education (NSHE) and its respective institutions;

WHEREAS the Chancellor is the chief executive officer and ex-officio treasurer of NSHE and is responsible to the Board for the administration of NSHE, the implementation of Board policies and directives, and the financial management of NSHE;

WHEREAS the Chief General Counsel has a duty to provide legal advice to the Board and to prepare all legal papers on behalf of the Board;

WHEREAS it is necessary and proper for the Chancellor in conjunction with the advice and counsel of the Chief General Counsel to safeguard the legal interests of NSHE and its respective institutions;

WHEREAS circumstances may arise where legal action may be required on short notice or in emergency situations;

WHEREAS, except as otherwise required by law, the Board has inherent authority to delegate its authority and responsibility regarding such matters as it sees fit; and

WHEREAS, in addition to such inherent authority, NRS 241.0357 allows a public body to delegate authority to make any decision regarding litigation concerning the public body or one of its officers or employees, or in a matter in which the public body intervenes or participates officially;

THEREFORE, BE IT HEREBY RESOLVED that, consistent with NRS 241.0357 and to safeguard the legal interests of NSHE and its respective institutions, the Board of Regents hereby delegates to the Chancellor, or the individual authorized by the Board of Regents to serve in the role of Chancellor, after consultation with the Chair of the Board of Regents and consistent with the advice of the Chief General Counsel, the authority to make any decision regarding litigation, which includes administrative proceedings, in which the Board of Regents, any of its members, or an NSHE employee is a party in an official capacity or participates or intervenes in an official capacity. This delegation of authority includes authority to make any decision to initiate or respond to judicial or administrative litigation or claims, petitions for judicial review, writs, or other legal matters.

BE IT FURTHER RESOLVED that this resolution supersedes all prior delegations of authority to make litigation decisions.

BE IT FURTHER RESOLVED that nothing in this Resolution limits the ability of the Chancellor, or the individual authorized by the Board of Regents to serve in the role of Chancellor, to take any litigation matter, or other matter regarding a dispute or claim, to the Board of Regents for consideration and action.

PASSED AND ADOPTED on this ____ day of May 2024.

Chair
Board of Regents of the
Nevada System of Higher Education

(SEAL)
Attest:

Chief of Staff to the
Board of Regents

**CLARK COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM**

Petitioner: Steven B. Wolfson, District Attorney

Recommendation:

Approve a Resolution delegating authority to the County Manager or her designee to make decisions regarding litigation when insufficient time exists to bring the matter before the Board for decision at a regular board meeting. (For possible action)

FISCAL IMPACT:

Fund #:	N/A	Fund Name:	N/A
Fund Center:	N/A	Funded PGM/Grant:	N/A
Amount:	N/A		
Description:	N/A		
Additional Comments:	N/A		

BACKGROUND:

In the 2018 case of State Commission on Ethics v. Hansen, the Nevada Supreme Court held that a executive officer did not have authority to initiate an appeal of a lower court ruling without the approval of the agency's governing body and that subsequent ratification of that appeal by the governing body was not retroactive for purposes of determining whether an appeal was timely filed.

In response, the 2019 Nevada Legislature enacted NRS 241.0357, which allowed the delegation of litigation authority to the chief executive officer of an entity. This proposed resolution would exercise that right of delegation, in order to preserve the legal rights of the County, its officers and employees engaged in litigation in the course and scope of the County's functions.

Cleared for Agenda

4/7/2020

Agenda Item #

53.

Resolution

Whereas, filing deadlines and requirements in litigation matters do not always coincide with regularly scheduled meetings of the Board of County Commissioners; and

Whereas, in some cases County elected officials are named as the sole County representative party in administrative matters and appeals, causing confusion with respect to who has the authority to authorize actions in a particular matter; and

Whereas, NRS 241.0357 allows a public body to delegate authority to a county executive to make any decision regarding litigation concerning the public body or one of its officers or employees, or in a matter in which the public intervenes or participates officially;

Now, therefore, the Board of County Commissioners does hereby authorize the County Manager or his/her designee to:

a. Authorize the institution of a legal action necessary or desirable to protect the rights of the County and its officers and employees in the event that court rules, statutes, or other laws require legal action before the matter can be brought to the County Commissioners for official approval. The Manager shall report to the Board at its next regular meeting any such litigation initiated pursuant to this resolution.

b. Authorize County attorneys to take all necessary actions to perfect an appeal or related appellate rights, which action is necessary before the matter can be brought to the County Commissioners for official approval. The County attorney shall promptly report to the Board any such appellate relief initiated pursuant to this resolution.

c. Authorize County attorneys to take any actions necessary in pending litigation to preserve rights against plaintiffs and other parties to that litigation, such as cross claims and similar related actions, the filing of which is necessary in the pending action to reserve the County's rights.

The Board further resolves that:

1. This delegation of authority includes any necessary initiation of or response to administrative litigation, petitions for judicial review or other appellate matters relating to statutory and administrative matters of County departments.

2. This resolution does not authorize any county official to settle litigation in excess of the delegation of authority previously issued by this Board.

PASSED, ADOPTED AND APPROVED this _____ day of April, 2020.

CLARK COUNTY, NEVADA
BOARD OF COUNTY COMMISSIONERS

BY: _____
MARILYN KIRKPATRICK,

Chair

Attest:

LYNN MARIE GOYA, Clerk

Approved as to form:



Office of the District Attorney

RESOLUTION 2017R-053

A RESOLUTION AUTHORIZING THE DOUGLAS COUNTY MANAGER TO TAKE ANY LEGAL ACTION WITH THE DISTRICT ATTORNEY'S OFFICE DEEMED NECESSARY FOR THE PROTECTION OF DOUGLAS COUNTY'S INTERESTS

WHEREAS, NRS 244.165 grants to the Douglas County Board of Commissioners the power and jurisdiction within Douglas County to control the prosecution and defense of all civil lawsuits that may impact Douglas County or in which the County may have an interest; and

WHEREAS, the District Attorney has a duty to provide legal advice to the Board of County Commissioners and to prepare all legal papers on behalf of the Board; and

WHEREAS, the Douglas County Manager has been authorized and delegated authority by the Board of County Commissioners to act in the best interests of the Board and the citizens of Douglas County pursuant to NRS 244.135; and

WHEREAS, it necessary and proper for the County Manager, in conjunction with the advice and counsel of the Douglas County District Attorney, to safeguard the legal interests of Douglas County and to help ensure the health and safety of the public; and

WHEREAS, circumstances may arise where legal action may be required on short notice or in an emergency situation.

NOW, THEREFORE, BE IT RESOLVED by the Douglas County Board of Commissioners that the County Manager is authorized and delegated the authority to assert legal claims on behalf of Douglas County and to defend Douglas County, its officers, elected officials, and employees as is deemed necessary, including the filing of any lawsuit, appeal, writ, or other legal pleading, in consultation with the District Attorney and with the assistance of the Office of the District Attorney.

IT IS FURTHER RESOLVED that, upon the request of any member of the Douglas County Board of Commissioners, the County Manager will promptly explain the current state of any litigation the County may be involved in.

ADOPTED this 3rd day of August, 2017, by the following vote:

Ayes: Commissioners:

Barry Penzel
Steve Thaler
Nancy McDermid

Nays: Commissioners:

Dave Nelson

Absent: Commissioners:

Larry Walsh

William B. Penzel

William B. Penzel, Chairman
Douglas County Board of Commissioners

ATTEST:

Kathy Lewis
Kathy Lewis, Douglas County Clerk

By: Debra A. Johnson
Deputy Clerk

1 **RESOLUTION DESCRIBING THE AUTHORITY OF THE CITY ATTORNEY REGARDING**
2 **LITIGATION AND OTHER CONTESTED MATTERS**

3 WHEREAS, the City Council, the City Manager and the City Attorney each have authority and
4 responsibility regarding claims, litigation and other contested matters involving the City and its officers and
5 employees; and

6 WHEREAS, except as otherwise required by law, the City Council has inherent authority to delegate
7 its authority and responsibility regarding such matters as it sees fit; and

8 WHEREAS, in addition to such inherent authority, NRS 241.0357 authorizes the City Council to
9 delegate authority to a City executive to make any decision regarding litigation concerning any action or
10 proceeding in which the City Council, any of its members, or a City employee is a party in an official capacity
11 or participates or intervenes in an official capacity; and

12 WHEREAS, the authority of the City Council listed above includes the authority to delegate to the
13 City Attorney, as the Council’s legal adviser in all matters, the authority to authorize certain settlements of
14 contested matters and to employ special counsel, as deemed necessary in the public interest.

15 NOW, THEREFORE, BASED UPON THE FOREGOING, BE IT RESOLVED BY THE CITY
16 COUNCIL OF THE CITY OF LAS VEGAS, NEVADA, as follows:

- 17 1. To authorize the City Attorney, by delegation through the City Manager, to:
- 18 A. Take any action necessary or appropriate to perfect an appeal or related appellate rights in
19 any judicial or administrative proceeding. Notwithstanding the preceding sentence, an appeal of the final
20 judgment of a court requires prior approval by the City Council, except that when authority for such an appeal
21 cannot reasonably be taken before the City Council for prior approval, the item may be brought to the City
22 Council subsequently for ratification.
- 23 B. Take any action necessary or appropriate to institute any legal or administrative action
24 necessary or desirable to protect the rights of the City and its officers and employees.
- 25 C. Take any action necessary or appropriate in pending litigation to preserve rights against
26 parties to that litigation, such as cross claims and similar related actions, the filing of which is necessary in

1 the pending action to reserve the City’s rights.

2 D. Take any action necessary or appropriate to settle 1) pre-litigation disputes or claims or 2)
3 pending litigation claims against the City, in each case up to \$200,000, without the necessity of City Council
4 approval—unless regarding any particular unexecuted settlement, a member of the City Council requests to
5 have the settlement considered by the City Council. In each case to be settled by the City Attorney under this
6 Paragraph (D), the City Attorney shall consult, and review the terms of settlement, with Risk Management,
7 the City Manager, and any department or office which is connected to the facts of the dispute or claim. In the
8 case of any employment-related dispute or claim, the settlement requires consultation and review with the
9 Department of Human Resources and approval by the City Manager.

10 E. Retain special counsel for compensation up to \$50,000 on any particular matter, if the City
11 Attorney deems such action to be required in the public interest. Such compensation shall be chargeable to
12 the City’s General Fund or the Liability Insurance and Property Damage Fund. Retention of special counsel
13 under this Subparagraph (E) shall not be duplicative of the employment of any consultant or contractor by
14 the City Manager under authority that exists independent of this Resolution.

15 2. Nothing in this Resolution limits the ability of the City Attorney to take any litigation matter or other
16 matter regarding a dispute or claim to the City Council for consideration and action.

17 PASSED, ADOPTED, AND APPROVED this ____ day of _____, 2023.

18 CITY OF LAS VEGAS

19 BY _____
20 CAROLYN G. GOODMAN, Mayor

21 ATTEST:

22 _____
23 LUANN D. HOLMES, MMC
24 City Clerk

24 APPROVED AS TO FORM

25 _____
26 Val Steed, Date
Deputy City Attorney

RESOLUTION No.2689

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NORTH LAS VEGAS, NEVADA, CONFIRMING THE CITY ATTORNEY’S AUTHORITY AS THE CHIEF LEGAL OFFICER TO PURSUE JUDICIAL OR ADMINISTRATIVE PROCEEDINGS ON BEHALF OF THE CITY PURSUANT TO SECTION 3.050 OF THE NORTH LAS VEGAS CITY CHARTER.

WHEREAS, the City of North Las Vegas (“City”) is an incorporated city organized in 1946 by special charter pursuant to NRS Chapter 268; and

WHEREAS, In Section 1.010 of the North Las Vegas City Charter (“Charter”), the Nevada Legislature expressly declared its intent that all provisions of the Charter be liberally construed to carry out the express purposes of the Charter and that the specific mention of particular powers shall not be construed as limiting in any way the general powers necessary to carry out the purposes of the Charter; and

WHEREAS, pursuant to Section 3.050 of the Charter, the City Attorney is the Chief Legal Officer of the City, appointed by the City Council; and

WHEREAS, NRS 241.0357 provides that the City Council may delegate authority to the chair or the executive director of the public body, or an equivalent position, to make any decision regarding litigation concerning any action or proceeding in which the City or City employee is a party in an official capacity or participates or intervenes in an official capacity; and

WHEREAS, this resolution is to recognize and confirm the delegation of authority to the City Attorney pursuant to the Charter to make any decision regarding any judicial or administrative proceeding, in any such proceeding where the City or City employee is a party to the matter.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of North Las Vegas, Nevada, that:

SECTION 1. Pursuant to the Charter, the City Council recognizes and confirms the delegation of authority to the City Attorney as the Chief Legal Officer to make any decision regarding any litigation, action or proceeding, in any such proceeding where the

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City or any City employee is a party, including initiation of judicial or administrative proceedings, appeals, and settlement, subject to any applicable fiscal authority policies.

PASSED, ADOPTED AND APPROVED this 16th day of March 2022.

AYES: Mayor Pro Tempore Cherchio, Councilmembers Barron, Black, and Goynes-Brown

NAYS: None

ABSTAIN: None

ABSENT: Mayor Lee

APPROVED:



Mayor Pro Tempore, Richard J. Cherchio

ATTEST:



Jackie Rodgers, City Clerk

6. Approved – Update on Chief of Staff and Special Counsel to the Board Search –
(Continued)

Regent Geddes stated there are three qualified candidates, and the motion on the floor allows an extension to allow for more candidates.

Interim Chief of Staff Keri Nikolajewski restated the motion.

Motion carried via a roll call vote. Chair McAdoo, Vice Chair Carter, and Regents Arrascada, Boylan, Brooks, Doubrava, Geddes, McMichael, Moran, Perkins, and Tarkanian voted yes. Regent Carvalho voted no. Regent Del Carlo was absent.

7. Approved – Delegation of Authority to the Chair, Consistent with NRS 241.0357, in the matter of *Ballas v. State of Nevada ex. rel. Board of Regents of the Nevada System of Higher Education* – The Board approved authorizing the Board Chair to make any litigation decisions regarding the *Ballas* class action lawsuit, consistent with NRS 241.0357, after consultation with the Chancellor, or the individual authorized by the Board to serve in the role of Chancellor, and System General Counsel, consistent with the advice of System General Counsel. (Ref. BOR-7 on file in the Board Office.)

Interim Chief General Counsel Martines presented historical background and requested that the Board authorize the Board Chair to make any litigation decisions regarding the *Ballas* class action lawsuit, consistent with NRS 241.0357, after consultation with the Chancellor, or the individual authorized by the Board to serve in the role of Chancellor, and System General Counsel.

Regent Doubrava moved approval to authorize the Board Chair to make any litigation decisions regarding the *Ballas* class action lawsuit, consistent with NRS 241.0357, after consultation with the Chancellor, or the individual authorized by the Board to serve in the role of Chancellor, and System General Counsel. Regent McMichael seconded.

Regent Carvalho offered a friendly amendment to add "...after consultation with *and approval by* the Chancellor..."

Regent Doubrava clarified whether this language included an Officer in Charge, with Chair McAdoo stating it did.

Regents Doubrava and McMichael accepted the friendly amendment.

Officer in Charge Abba asked Interim Chief General Counsel Martines to clarify the language.

7. Approved – Delegation of Authority to the Chair, Consistent with NRS 241.0357, in the matter of *Ballas v. State of Nevada ex. rel. Board of Regents of the Nevada System of Higher Education* – (Continued)

Interim Chief General Counsel Martines clarified whether “*and approved by*” meant approval of both the Chancellor or the individual authorized by the Board to serve in the role of Chancellor, and System General Counsel. Regent Carvalho stated she intended that both approve it.

Regents Doubrava and McMichael agreed with and understood the intention.

Vice Chair Carter disagreed with the requested addition and stated he would vote no on the motion.

Regent Moran asked whether a particular individual approached Officer in Charge Abba related to this item. Officer in Charge Abba stated no person approached her. Instead, it was a discussion she had with the legal staff.

In response to a question from Regent Moran related to a Supreme Court decision, Officer in Charge Abba stated she is not advising the Board on this matter but has asked Interim Chief General Counsel Martines to advise the Board on this matter.

Regent Moran was trying to understand how and why this has come forward. This agenda item may create the appearance of not being transparent and in opposition to the mission in favor of shared governance. Interim Chief General Counsel Martines stated he had read the opinion in the past. This agenda item was specifically brought forward because of decisions that need to be made solely with respect to the Ballas litigation. To the best of his knowledge, this was brought forward to make timely decisions moving forward as discovery is picking up. Officer in Charge Abba stated this is a matter of efficiency in terms of the ability to make quick decisions. She does not believe it is appropriate to give the Chancellor authority over this. The Board is the elected body, which delegates that authority to the Chair of the elected body in consultation with the Chancellor and General Counsel. She stated it is in that role that she will advise to the best of her ability on this matter. However, because it is a legal matter, it is most appropriate for the attorneys to advise; therefore, she recommends that the Board follow the briefing paper, which provides that the authority rests with the Board through Board leadership.

Regent Moran stated to delegate this authority creates a slippery slope related to the Board’s responsibilities. He believes that there are very few situations where there would not be an opportunity to bring any significant decision in any litigation before the Board.

Regent Carvalho stated it was not her intention to create a division. However, during this consultation, if the Chair thinks the advice of General Counsel is not how he/she wants to proceed, then there is no safe harbor.

7. Approved – Delegation of Authority to the Chair, Consistent with NRS 241.0357, in the matter of *Ballas v. State of Nevada ex. rel. Board of Regents of the Nevada System of Higher Education* – (Continued)

Interim Chief General Counsel Martines believed it was inherent that any public officer has certain liabilities if they do not comply with legal advice.

Regent Carvalho rescinded her original friendly amendment and offered a new friendly amendment to add "...and System Counsel, *consistent with the advice of System General Counsel.*"

Regents Doubrava and McMichael accepted the friendly amendment.

Regent Moran stated Board members do not want the Chair to accept liability in its entirety.

Regent Brooks stated it is important to recognize that this relates to one case and the Ballas litigation.

Motion carried via a roll call vote. Chair McAdoo, Vice Chair Carter, and Regents Arrascada, Boylan, Brooks, Carvalho, Doubrava, Geddes, McMichael, Moran, Perkins, and Tarkanian voted yes. Regent Del Carlo was absent.

Regent Brooks left the meeting.

8. Approved – First Amendment to Standard Office Lease Between UNLV on Behalf of the Kirk Kerkorian School of Medicine and 3010 Westbay LLC for Property Located at 3016, 3014 and 3010 West Charleston Blvd. – The Board approved the First Amendment to Standard Office Lease for property located at 3016 West Charleston Boulevard, Suites 100, 110, and 205; 3014 West Charleston Boulevard, Suites 110, 130, and 150; and 3010 West Charleston Boulevard, Suites 150 and 125; also commonly known as Clark County Assessor parcel numbers 139-32-405-017, 139-32-405-018 and 139-32-405-026, and to grant authority to the Chancellor, or the individual authorized by the Board to serve in the role of Chancellor, to execute the First Amendment and any ancillary documents needed to implement the terms and conditions associated with the First Amendment, as deemed necessary and appropriate by System General Counsel. (Ref. BOR-8 on file in the Board Office.)

Regent Brooks entered the meeting.