



AARON D. FORD
Attorney General

KYLE E.N. GEORGE
*First Assistant Attorney
General*

CHRISTINE JONES
BRADY
*Second Assistant Attorney
General*

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

MEMORANDUM

- Confidential – Attorney Client Privilege -

To: Nikhil Narkhede, Off Highway Vehicle Program Manager
Commission Members, Off High Vehicle Commission

From: Anthony J. Walsh, Deputy Attorney General, (775) 684-1213,
AJWalsh@ag.nv.gov

Date: August 30, 2021

Subject: Parameters of Off High Vehicle Grant Funding in Connection to Law
Enforcement Funding Requests

In your capacity as Program Manager for the Off Highway Vehicle Commission, you have requested my legal opinion regarding the scope of NRS 490 as it relates to grant funding requests.

QUESTIONS AND SHORT ANSWERS

1. What are the limitations NRS 490.069 in relation to grant funding requests submitted by law enforcement agencies?

It is recommended that law enforcement requests for grant funding be directly tied to the specific uses defined by statute. Though some statutory uses appear broad, they should be viewed as narrowly as possible to avoid accusations of arbitrary and capricious decision making.

I. ANALYSIS

NRS 490.069 Account for Off-Highway Vehicles states, in pertinent part:

(c) Any money in the Account that is not used pursuant to paragraph (a) or (b) each fiscal year may be used by the Commission to award grants as provided in [NRS 490.068](#) for projects relating to:

(1) Studies or planning for trails and facilities for use by owners and operators of off-highway vehicles. Money received pursuant to this subparagraph may be used to prepare environmental assessments and environmental impact studies that are required pursuant to 42 U.S.C. §§ 4321 et seq.

(2) The mapping and signing of those trails and facilities.

(3) The acquisition of land for those trails and facilities.

(4) The enhancement or maintenance, or both, of those trails and facilities.

(5) The construction of those trails and facilities.

(6) The restoration of areas that have been damaged by the use of off-highway vehicles.

(7) The construction of trail features and features ancillary to a trail including, without limitation, a trailhead or a parking area near a trailhead, which minimize impacts to environmentally sensitive areas or important wildlife habitat areas.

(8) Safety training and education relating to the use of off-highway vehicles.

(9) Efforts to improve compliance with and enforcement of the requirements relating to off-highway vehicles.

Principles of statutory interpretation favor the plain meaning of the statute. *State v. Lucero*, 249 P.3d 1226, 127 Nev. 92 (2011). At the same time, agency decisions are required to be supported by substantial evidence OR are required not to be arbitrary and capricious. See NRS 233B.135.

Nevada courts have widely interpreted such requirements and have found that the Nevada Supreme Court's role in reviewing an administrative decision is identical to that of the district court: to review the evidence presented to the agency in order to determine whether the agency's decision was arbitrary or capricious and was thus an abuse of the agency's discretion. See *United Exposition Service Co. v. SIIS*, 851 P.2d 423, 109 Nev. 421 (1993); *Titanium Metals Corp. v. Clark County*, 99 Nev. 397, 399, 663 P.2d 355, 357 (1983).

Courts will not substitute its judgment of the evidence for that of the administrative agency. *State, Dep't of Mtr. Vehicles v. Becksted*, 107 Nev. 456, 458, 813 P.2d 995, 996 (1991). Courts are further limited to the record below and to the determination of whether the administrative body acted arbitrarily or capriciously. *State, Emp. Sec. Dep't v. Weber*, 100 Nev. 121, 124, 676 P.2d 1318, 1320 (1984). The central inquiry is whether substantial evidence supports the agency's decision. *Desert Inn Casino & Hotel v. Moran*, 106 Nev. 334, 336, 792 P.2d 400, 401 (1990). **Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.** *State, Emp. Security v. Hilton Hotels*, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986).

My research does not reveal any cases in which Nevada courts have reviewed the requirements of NRS 490.069. However, based on the above “plain meaning” principal and requirement under NRS 233B that decisions not be in excess of statutory authority; that they must be supported by substantial evidence or not be arbitrary and capricious, there is room for commission to interpret the defined elements of NRS 490.069.

For example, in past meetings, law enforcement agencies have requested grant funding for projects that either loosely or do not comfortably fit into the subsections of NRS 490.069. Primarily, commissioners have expressed concern that the Commission cannot simply fund a specific or blanket law enforcement project. I agree in that no element of NRS 490.069 authorizes such funding.

However, NRS 490.069 (c) (8) and (9), which authorize funds for safety training and education, as well as funding for efforts to improve compliance and enforcement of the requirements relating to off highway vehicles, do leave room for law enforcement agencies to benefit from OHV funding while also fulfilling their mandate of public protection and law enforcement.

Because there is no case law interpreting this statute, my recommendation is not based on any one Nevada case. Rather, only a few hypothetical scenarios seem instructive in order of descending departure from the law:

- 1) It would be a clear-cut departure from NRS 490.069 to fund a law enforcement agency's request for any OHV simply to conduct patrols.
- 2) It would be close, but likely acceptable, to fund a law enforcement agency's request for funding to be used to purchase or maintain an OHV that would be primarily used for training and efforts to enforce OHV requirements (presumably registration and tags), to the extent that the requesting agency can articulate that need. If an agency can describe that general patrolling duties, such as DUI, poaching or littering would be incidental to the main use of the OHV, I feel confident that the Commission's approval would not be outside the scope subsection (9) and would not be arbitrary or capricious.
- 3) It would be clearly acceptable for the Commission to approve funds for a law enforcement OHV that would exclusively be used for education, training or trail maintenance.

Conclusion

Because NRS 490.069 contemplates efforts to improve law enforcement capabilities relating to OHV laws, there is room for the Commission to make funding decisions based on subsection (9). However, such funding decisions should be based on clear requestor articulations of how the request relates to the statute. If the Commission is satisfied with that connection and there is enough evidence on the record to support a reasonable decision, the Commission would not be in excess of statutory authority under NRS 22B.135(3)(b).

Please note that such decisions are highly situational and can only truly be considered on a case-by-case basis and the quality of the request.

This memorandum is not to be construed as an official Attorney General's Office Opinion. This memorandum reflects the review, research and legal advice of the assigned Deputy Attorney General, Anthony J. Walsh.