

***Richardson Constr. v. Clark Cty. Sch. Dist.*, 123 Nev. Adv. Op. 8
(April 12, 2007)¹**

ADMINISTRATIVE LAW – STATUTORY CONSTRUCTION

Summary

Richardson Construction appeals a district court order determining that NRS 338.1381 does not permit a private cause of action.

Disposition/Outcome

The Court affirmed the order of the district court, holding that because NRS 338.1381 does provide an express remedy but does not provide for a private cause of action, the statute does not create a private cause of action.

Factual and Procedural History

For several years, Richard Construction contracted with Clark County School District (“CCSD”) to execute various public work projects. In compliance with CCSD’s prequalification procedures, Richardson submitted a bidder’s prequalification package to CCSD, in January, 1999. A short time after this submission, Richardson commenced a series of lawsuits against CCSD pertaining to existing contracts between the parties. In a December 1999 letter, CCSD informed Richardson that its prequalification package had been denied.

Richardson claims that CCSD’s letter indicated that the prequalification package denial was based on Richardson’s pending litigation. Additionally, between 2000 and 2003, according to Richardson, CCSD informed Richardson that it would be barred from bidding on any CCSD projects while such litigation was pending.

Richardson then filed suit against CCSD for violation of the bidder-prequalification and award of contract statutes,² based on its prequalification package denial and CCSD’s ensuing letter. The district court determined that NRS 338.1381 provides contractors, whose prequalification applications have been denied, the exclusive remedy of requesting a hearing from the local governing board and, if wronged by the governing board’s hearing, further judicial review. The court further concluded that because the statute makes no explicit mention of any private cause of action, Richardson had no cause of action for damages. Consequently, the court granted CCSD’s motion to dismiss. On appeal, Richardson’s primary argument was that NRS 338.1381 does permit a private cause of action.

¹ By Joshua Woodbury.

² NEV. REV. STAT. § 338.1375-1383 (2005).

Discussion

Plain Language

The plain language of the statute provides a means for applicants denied as qualifying bidders for a public works project to challenge that denial. Such an applicant may request a hearing from either the State Public Works Board or the local government.³ Following the application, a hearing must be held, rendering a decision.⁴ That decision is a “final decision for purposes of judicial review.” The statute does not explicitly grant similar privileges to private persons seeking damages through a cause of action.

The Court concluded that the absence of a provision in a statute expressly providing for a private cause of action suggests that the legislature did not intend enforcement through private litigation.⁵ Additionally, because the statute does contain an express remedy, the court should be cautious about reading in additional remedies.⁶

Public Policy

The twofold purpose of bidding for public works contracts is to “save public funds” and to guard against “favoritism, improvidence and corruption.”⁷ As a result, public works bidding statutes should be “construed for the public good.”⁸

The Court recognized that reading a private cause of action into NRS 338.1381 could encourage lengthy and costly litigation which would drain public funds and therefore not serve the public good.

Doctrine of Primary Jurisdiction

The doctrine of primary jurisdiction requires that in the interest of uniform regulation and the need of tribunals with specialized knowledge to adjudicate certain issues,⁹ courts may occasionally be required to allow a governmental body to first consider the issue.¹⁰

The Court concluded that the doctrine of primary jurisdiction, along with its underlying policies, further supported that NRS 338.381 does not include a private cause of action.

Conclusion

The Court found that NRS 338.1381 does not provide a private cause of action. Considering the plain language of the statute, which does expressly provide a remedy, the public

³ NEV. REV. STAT. § 338.1381(1).

⁴ NEV. REV. STAT. § 338.1381.

⁵ See *Sports Form v. Leroy’s Horse & Sports*, 108 Nev. 37, 40-41, 823 P.2d 901, 903 (1992).

⁶ *Builders Ass’n v. City of Reno*, 105 Nev. 368, 370, 776 P.2d 134, 1235 (1989); see also *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 487-88 (1996).

⁷ *Gulf Oil Corp. v. Clark County*, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978).

⁸ *Id.* at 118-119, 575 P.2d at 1333.

⁹ *Sports Form*, 108 Nev. at 37, 823 P.2d at 903.

¹⁰ *Id.*

policy rationale for public works bidding statutes, and the doctrine of primary jurisdiction, the statute should not be construed as containing a private cause of action. Accordingly, the Court upheld the order of the district court.