

IN THE SUPREME COURT OF THE STATE OF NEVADA

BUILDING & CONSTRUCTION  
TRADES COUNCIL OF NORTHERN  
NEVADA,  
Appellant,  
vs.  
CARSON CITY SCHOOL DISTRICT;  
HAMILTON SOLAR, LLC; AND STEVE  
C. HAMILTON, INC., A NEVADA  
CORPORATION,  
Respondents.

No. 57730

**FILED**

NOV 29 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *H. Ingersoll*  
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order denying mandamus relief to compel bidding on a government contract to buy and install solar panels. First Judicial District Court, Carson City; Deborah A. Agosti, Judge.

The Carson City School District (school district) learned of a photovoltaic project (solar panel project) that the City of Sparks planned to undertake, for which it had already accepted bids from a number of companies in the area. The lowest qualified bidder was Steve C. Hamilton, Inc. (Hamilton Solar). The school district then contacted Hamilton Solar in order to join the contract that had been entered into by Hamilton Solar and the City of Sparks, pursuant to NRS 332.195.<sup>1</sup> By joining Hamilton Solar's contract, the school district did not accept bids

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<sup>1</sup>NRS 332.195(1) provides that “[a] governing body or its authorized representative . . . may join or use the contracts of local governments located within or outside this State with the authorization of the contracting vendor.”

from any other contractors. Because of the school district's installation of solar panels, NV Energy granted rebates to the school district.

Appellant Building and Construction Trades Council of Northern Nevada (Trades Council) filed a petition for a writ of mandamus or, in the alternative, a writ of prohibition asking the district court to direct the school district to either accept bids for its project to install solar panels at its schools or to refrain from continuing work on the project. Trades Council argued that although the school district could join the City of Sparks' contract to purchase the solar panels, the school district was still required to solicit bids for the installation of the panels. The district court summarily granted Trades Council's petition for a writ of mandamus and ordered the school district to refrain from any proceedings in furtherance of the solar panel project. At a subsequent hearing, the district court dismissed the petition for a writ of mandamus and quashed the writ that it had issued earlier. Trades Council then filed this appeal. Between the time that the district court dismissed the petition for a writ of mandamus and when the matter came before this court, the entire solar panel project was completed. As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

This appeal is moot

As the solar panel project is complete, our primary concern is that the appeal is moot because we would be unable to grant any effective relief. Mootness is a question of justiciability. Personhood Nevada v. Bristol, 126 Nev. \_\_\_, \_\_\_, 245 P.3d 572, 574 (2010). We may not render advisory opinions, and as such, may only "resolve actual controversies by an enforceable judgment." Id. An actual controversy must exist throughout the pendency of the case. Arizonans for Official English v.

Arizona, 520 U.S. 43, 67 (1997). Even if a controversy exists at the beginning of the case, subsequent events may render the case moot. University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004).

If we were to reverse the district court's order dismissing the petition for a writ of mandamus and quashing the writ of prohibition, and to then instruct the district court to issue the writ, the school district would have to "desist and refrain from any further proceedings in furtherance of the [solar panel] project" or solicit bids for the installation of the solar panels. An order of this nature would be an advisory opinion because the writ would serve no purpose, as there is no longer a project to be completed. Therefore, because there is no longer a live controversy or the possibility of remedying any existing problem through writ relief, we conclude that this case is moot.

Capable of repetition yet evading review

In certain cases, however, we may reach the merits of a moot case. See, e.g., Personhood Nevada, 126 Nev. at \_\_\_, 245 P.3d at 574. The most commonly referenced exception to the mootness doctrine allows a court to reach the merits of a moot case if the factual circumstances of the case are capable of repetition yet evade review. Id. We have adopted this exception to mootness in cases involving matters of widespread importance that "could never be decided because of the nature of [their] timing." State v. Washoe Co. Public Defender, 105 Nev. 299, 301, 775 P.2d 217, 218 (1989); see also Traffic Control Servs. v. United Rentals, 120 Nev. 168, 171-72, 87 P.3d 1054, 1057 (2004) (recognizing that the exception applies when the duration of the challenged action is "relatively short," and there is a "likelihood that a similar issue will arise in the future");

Matter of Guardianship of L.S. & H.S., 120 Nev. 157, 161, 87 P.3d 521, 524 (2004) (stating a matter is justiciable “where an issue is capable of repetition, yet will evade review because of the nature of its timing”). Undeniably, public bidding is of widespread importance in saving public funds, ensuring fair competition, and preventing corruption or favoritism. See Gulf Oil Corp. v. Clark County, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978). Appellant, however, has not convinced this court that this exception to the mootness doctrine applies here.

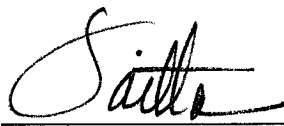
We conclude that this type of litigation is capable of repetition because there are other entities taking advantage of this statute, and there has not yet been any clarification by this court or the Legislature. However, even if the matter is an issue of widespread importance and is capable of repetition, the issue must also be “evading review.” Personhood Nevada, 126 Nev. at \_\_\_, 245 P.3d at 574.

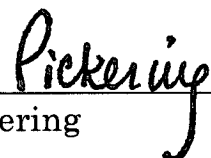
Here, it is not clear that the challenged action is too short in its duration to be fully litigated prior to its natural expiration, thus evading review. Id. at \_\_\_, 245 P.3d at 574 (discussing the capable-of-repetition-yet-evading-review exception to the mootness doctrine); Matter of Guardianship of L.S. & H.S., 120 Nev. at 161, 87 P.3d at 524. The short period of time involved with this particular solar panel project stemmed from the installation deadline imposed by NV Energy, which may have hindered Trade Council’s ability to seek a stay of the project or limited the time for adequate appellate review. While there is nothing inherent in this matter that would evade review, we further conclude that Trade Council’s failure to seek to enjoin the project until this court could address the merits of the appeal or to request this court’s expedited review caused this case to evade review. See, e.g., Matter of Bunker Ltd. Partnership,

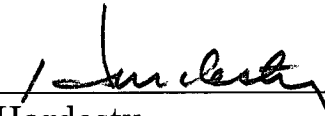
820 F.2d 308, 311 (9th Cir. 1987) (recognizing that “a party may not profit from the ‘capable of repetition, yet evading review’ exception to mootness, where through his own failure to seek and obtain a stay he has prevented an appellate court from reviewing the trial court’s decision).

Thus, we decline to apply this exception to the mootness doctrine and, consequently, will not reach the merits of this case.<sup>2</sup> We therefore,

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

cc: Chief Judge, First Judicial District Court  
Hon. Deborah A. Agosti, Senior Justice  
Michael E. Langton  
Allison, MacKenzie, Pavlakis, Wright & Fagan, Ltd.  
Littler Mendelson/Las Vegas  
Carson City Clerk

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<sup>2</sup>We also conclude that no other exceptions to the mootness doctrine apply.