

Construing the cited statute in a manner to prohibit only the act of hiring relatives within the proscribed class does not do violence to the general purpose of antinepotism legislation as expressed in the decided cases, which is to prevent the evil of selecting public employees on the basis of kinship rather than merit. *See* 88 A.L.R. 1103. If it had been the purpose of the Legislature to prohibit employment following the assumption of an appointing office by a relative, it could have expressly included such a provision in the act.

Based on the reasons above stated we are of the opinion that [NRS 281.210](#) prohibits only the act of employing relatives within the class defined by the statute and that continued employment of the present "County Road Superintendent," should his nephew be elected to the appointing board, would not contravene the provisions of that statute.

An appointment, or reappointment, to the office of "County Road Superintendent" of an uncle of any of the members of the Board following the coming election would, of course, constitute a violation of the Nepotism Act, but it appears that election of new Commissioners does not create any necessity for such an appointment.

Where appointments at pleasure are to be made by a board, the tenure of the incumbent is not terminated by a change in the personnel of the board * * *. (67 C.J.S. 200.)

The conclusions stated herein are in accord with Attorney General Opinions No. 347, October 3, 1929; No. 196, December 5, 1935; No. 223, September 10, 1952; insofar as they differ from the conclusion stated in Attorney General Opinion No. 430, December 3, 1958, we think the views here expressed ought to control.

Respectfully submitted,

ROGER D. FOLEY
Attorney General

By: Earl Monsey
Deputy Attorney General

OPINION NO. 60-179 DISTRICT ATTORNEYS; COUNTY OFFICERS; ELECTIONS—[NRS 252.060](#) construed. An appointment to the office of District Attorney vacated by resignation occurring prior to biennial election cannot extend beyond the next biennial election, at which time the electorate is to determine who shall fill the unexpired term of that office. [NRS 294.300](#) construed. Resignation of District Attorney prior to the holding of a primary election but subsequent to the last day permitted for filing for such election creates a vacancy in party nomination after the holding of a primary, and [NRS 294.300](#) applies, authorizing and requiring County Central Committees to nominate.

Carson City, September 20, 1960

Honorable Jack C. Cherry, District Attorney, Clark County, Las Vegas,
Nevada

STATEMENT OF FACTS

Dear Mr. Cherry:

Mr. George Foley was duly elected to the office of District Attorney of Clark County to serve a four-year term commencing January 1959 and ending January 1963. On August 22, 1960 he resigned from that office and the County Commissioners of Clark County appointed Jack C. Cherry to replace him. The vacancy in office occurred prior to the holding of the primary election of September 6, 1960, but subsequent to the last day for filing a declaration of candidacy for that election, which is declared to be not less than 50 days prior to the primary. ([NRS 294.120.](#)) A general election is to be held November 8, 1960; however, the office of District Attorney would not ordinarily appear on the ballot at that election ([NRS 296.015](#), [NRS 252.020](#)). The District Attorney of Clark county has, in his letter of September 9, 1960, presented the questions appearing below for our consideration.

QUESTIONS

1. Is the office of District Attorney of Clark County to be filled by election on November 8, 1960, or does the appointment of the present District Attorney extend until the completion of the unexpired term of his predecessor?
2. If the office of District Attorney is to be filled by the coming election, in what manner are the candidates of the respective political parties to be chosen?

CONCLUSIONS

1. The office of District Attorney of Clark County is to be filled by election on November 8, 1960.
2. The County Central Committees of the respective political parties are authorized and required to nominate candidates for the office of District Attorney.

ANALYSIS

[NRS 252.060](#) provides:

252.060 Vacancy in office. In case a vacancy should occur in the office of district attorney, by death, removal, or otherwise, the board of county commissioners shall appoint some suitable person to fill vacancy until the *next ensuing biennial election*. (Emphasis added.)

[NRS 245.170](#) provides:

245.170 County commissioners to fill vacancies. When any vacancy shall exist or occur in any county or township office, except the office of district judge and county

commissioner, the board of county commissioners shall appoint some suitable person, an elector of the county, to fill such vacancy until the *next ensuing biennial election*. (Emphasis added.)

The cited statutes can best be understood in the light of a brief review of pertinent judicial decisions.

In the case of *Bridges v. Jepsen*, [48 Nev. 64](#), 227 P. 588 (1924), the County Clerk and Treasurer of Douglas County who was elected for a four-year term commencing in January of 1923, died during the first week of his administration. The County Commissioners thereupon appointed Jepsen to fill the vacant office. Bridges sought mandamus to compel the County Clerk to include the office of County Clerk and Treasurer in the notice proclaiming offices to which candidates were to be nominated in the primary election of 1924. The controlling statute provided that when vacancies occurred in the office of County Clerk, the Board of County Commissioners was to appoint to fill the vacancy “until the next general election.” The Court denied the writ, holding that the office of Clerk was not open for election, since it was filled by appointment until the next election at which a County Clerk would regularly be elected. The Court stated:

* * * Now that county officers hold for a term of four years, a vacancy occurring in such offices is to be filled by appointment by the board of county commissioners until the next general election prescribed by law for the election of county officers. It may be that the legislature, having changed the term of county officers from two to four years, should have been provided that an election to fill a vacancy be held at any biennial election; but they did not do so, * * *.

The rule stated in the *Jepsen* case, *supra*, was followed in *Grant and McNamee v. Payne*, [60 Nev. 250](#), 107 P.2d 307 (1940), where it was held that an election for the office of State Senator of Clark County, vacated by the resignation of the incumbent in 1940 could not be held at the biennial election of 1940, but could only be held at the general election of 1942, when that office would ordinarily be filled by election. As to county offices as opposed to state offices, however, the Court said that the 1939 amendment to Section 4813 NCL (presently [NRS 245.170](#), *supra*) was “for the purpose of changing the rule declared by this court in *State ex rel. Bridges v. Jepsen* * * *.” The 1939 amendment referred to appears at page 146, Statutes of Nevada 1939, and that amendment together with the amendment appearing at page 165, Statutes of Nevada 1933, had the effect of changing the term of appointment to a vacated county office from the next ensuing general election to the next ensuing biennial election.

[NRS 252.060](#), *supra*, relates specifically to the office of District Attorney and provides that the appointee of the Board of County Commissioners shall fill a vacancy “until the next ensuing biennial election.” The legislative history beneath this statute does not indicate that it was ever amended; however, the comparable statute in NCL, Section 2085, provided that the appointee would “remain in office during the balance of the unexpired term.” The reviser’s note to [NRS 252.060](#) notes the change in language and makes reference to Section 4813 NCL 1931 (*supra*). He has adopted the view that the 1939 amendment to that section,

which governed all county officers, amended the specific section governing District Attorneys. The Nevada Revised Statutes were enacted as the law of this State and all prior laws were repealed by virtue of Chapter 2, Statutes of Nevada 1957, page 2.

It can readily be observed from the foregoing that the existing statutes result from a clear legislative attempt to overcome the rule stated in the *Jepsen* case and furnish the electorate with an opportunity to fill a vacated county office at the earliest convenient time. It follows that the appointment of the present District Attorney of Clark County cannot extend beyond the next biennial election to be held on the 8th day of November, 1960, at which time the voters shall determine who shall fill the unexpired term of that office.

Having decided that the District Attorney must be elected at the coming biennial election, it is necessary to determine in what manner the political parties are to choose the nominees to that office. [NRS 294.300](#) provides:

294.300 Vacancy in party nomination after primary: How filled. Vacancies occurring after the holding of any primary election shall be filled by the central committee of the political party of the county, district or state, as the case may be. Such action shall be taken not less than 30 days prior to the November election.

In the case of *Brown v. Georgetta*, [70 Nev. 500](#), 275 P.2d 376 (1954), it was contended the cited statute applied only in cases where the nominee at the primary election died or resigned, but the Court held the statute was not so limited. In that case it was applied to a vacancy in nomination created by a vacancy in office occasioned by the death of Senator McCarran following the primary election. The Court cited from *Penrose v. Greathouse*, [48 Nev. 419](#), 233 P. 527, 529:

But, as said in *State v. Hostetter*, supra, where, by reason of death, as in this case, a vacancy in an office occurs shortly before a general election at which someone to fill the office for the unexpired term should be chosen, and no one has been nominated to said office (as in this case), there is a vacancy in the nominations within the meaning of the election law, and such a vacancy may be supplied, at any time prior to the election, by a nomination authenticated in the mode pointed out by the ballot law.

In the case at hand the resignation of George Foley occurred prior to the actual holding of the primary election but following the last day permitted for filing. This resulted in the creation of a vacancy in party nomination after the holding of a primary, and we are, therefore, of the opinion that [NRS 294.300](#) applies and the respective County Central Committees should nominate.

Respectfully submitted,

ROGER D. FOLEY
Attorney General

By: Earl Monsey