The rules cited above relating to a board of county commissioners generally apply also to a city council. 56 Am.Jur.2d Municipal Corporations, § 177.

In addition, NRS 244.075 requires a county clerk to "keep a full and complete record of all the proceedings of the board * * * and all such proceedings shall be entered upon the record.

The Yerington City Charter, at Section 3.030, contains similar language and even commands attendance at council meetings for the city clerk. For general incorporation cities, NRS 266.480 requires the same.

Having a legal duty to make a record of its actions, it is our opinion that a board of county commissioners or city council meeting in executive or personnel session pursuant to the Nevada Open Meeting Law, NRS 241.030, may allow any person to remain in the room whose services are reasonably necessary for the board or council to adequately discharge its duties under law, including the county or city clerk, or one of the deputies of the same, if that individual has the responsibility for taking the minutes of all meetings of that group and keeping its records. Case law from other jurisdictions supports our view. See Thomas v. Bd. of Trustees of Liberty Twp., 215 N.E.2d 434 (Ohio 1966), and Blum v. Bd. of Zoning and Appeals, 149 N.Y.S.2d 5 (N.Y. 1956).

The need for such person or persons to be present for the purpose of making an accurate record is even more essential today in view of the fact that many public employees are now seeking court review of adverse decisions reached at closed personnel sessions.

Under NRS 239.010, 244.075, and 268.305, the minutes of a board of county commissioners or city council would normally be classified as a "public record" which could be examined by any interested person.

However, the minutes and other records made at a legally closed executive personnel session cannot be so viewed, since to do so would destroy the confidentiality of the meeting and defeat the very purpose of the statutes which allow such meetings to be held in private for the benefit of the employee affected. NRS 241.030, 244.080, subsection 3, and 268.305, subsection 3.

We therefore recommend that the clerk maintain a separate minute book of any such meetings, with access thereto restricted to the parties involved, their respective attorneys, or any person possessing a valid court order commanding access to that record.

This minute book and other related records should furthermore be kept in a place apart from those records in the clerk's office otherwise open to the public for inspection. We believe it is best to leave the actual details of any security system to the county or city clerk to decide.

CONCLUSION

It is therefore our conclusion that a board of county commissioners or city council need not exclude its clerk from any executive or personnel session, but should instruct the clerk to be present and discharge his legal duties in keeping the minutes of the board or council. These minutes of a legally confidential meeting are likewise to be kept confidential.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By WILLIAM E. ISAEFF, *Deputy Attorney General*

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197 Primary Elections—(1) Candidates in a party primary election must be registered voters of the party for which they seek nomination. (2) Candidates

in a nonpartisan primary election must be qualified electors, but need not be registered voters. (3) NRS 293.176 is constitutional. (4) A candidate may not circumvent NRS 293.176 by cancelling his voter registration in one party and reregistering as a voter in another party.

CARSON CITY, January 27, 1976

MR. STANTON B. COLTON, *Registrar of Voters,* 400 Las Vegas Boulevard South, Las Vegas, Nevada 89101

DEAR MR. COLTON:

You have asked several questions relating to primary elections.

QUESTION ONE

In view of the provisions of Article 15, Section 3 of the Nevada Constitution, is it a valid law to require that a qualified elector should also be a *registered voter* in order to be a candidate in any *party primary* election? If not, what proof should be required of a nonregistered elector who wishes to be a candidate in a party primary election that he is affiliated with that party?

ANALYSIS—QUESTION ONE

NRS 293.177 provides in its pertinent parts:

> 1. * * * [N]o name may be printed on a ballot or ballot label to be used at a primary election unless the person named has filed a declaration of candidacy, or an acceptance of candidacy. * * *
>
> 2. A declaration of candidacy or an acceptance of candidacy required to be filed by this section shall be in substantially the following form:
>
> * * *
>
> For the purpose of having my name placed on the official primary ballot as a candidate for the …….. Party nomination for the office of ……., I, the undersigned ……., do swear (or affirm) * * * that I am a *registered voter* of the election precinct in which I reside * * *; that I am registered as a member of the …….. Party; * * * (Italics added.)

Since NRS 293.177 provides that no one may be a candidate in a party primary unless he files the above affidavit, and since the affidavit requires a candidate to acknowledge he is a registered voter, it is clear that NRS 293.177 requires a party primary candidate to be a *registered voter* of the party for which he seeks nomination in order to be eligible for the primary election.

However, Article 15, Section 3 of the Nevada Constitution provides that:

> No person shall be eligible to any *office* who is not a *qualified elector* under this constitution. * * * (Italics added.)

Article 2, Section 1 of the Nevada Constitution defines qualified electors as:

> All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state six months, and in the district or county thirty days next preceding any election. * * *[1]

The Nevada Supreme Court has pointed out that a "qualified elector" is not necessarily the same as a "qualified" or "registered voter." To be a registered voter, one

must be a qualified elector,[2] but the reverse is not true. State ex rel. Schur v. Payne, 57 Nev. 286, 62 P.2d 921 (1937); Caton et al. v. Frank, 56 Nev. 56, 44 P.2d 521 (1935); State ex rel. Boyle v. Board of Examiners, 21 Nev. 67, 24 P. 614 (1890).

In the Schur case, supra, a candidate attempted to file for the election for the nonpartisan office of justice of the peace. The county clerk refused to accept the candidate's declaration of candidacy because the candidate was not a registered voter of the township. The Nevada Supreme Court held that the candidate's filing should have been accepted because, as a qualified elector, he was eligible for the office. The court quoted from Bergevin v. Curtz, 127 Cal. 86, 59 P. 312 (1899), to the effect that:

> He could not have voted at the election, and thus would have been deprived of voting for himself, if he so desired; but, having the constitutional qualifications, he was eligible to the *office.* (Italics added.) State ex rel. Schur, supra, at 292.

The key word is "office." This candidate was not filing for a party nomination, but for the right to run for an office. The Nevada Supreme Court recognizes a distinction:

> * * * There is a substantial distinction in the law between the nominating of a candidate and the election of a public officer. * * * Riter v. Douglass, 32 Nev. 400, 425 (1910).

The Ritter case, supra, concerned itself with the constitutionality of

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[1]The six month residency requirement was advised to be unconstitutional due to the U.S. Supreme Court's ruling in Dunn v. Blumstein, 405 U.S. 330 (1972), in Attorney General's Opinion No. 85, dated June 19, 1972. It was removed from NRS 293.485 by the 1973 Legislature and the voters will have a chance to officially remove it from the Nevada Constitution in the 1976 general election.

[2]Article 2, Section 6 of the Nevada Constitution states that "Provision shall be made by law for the registration of the names of Electors. * * *"

Nevada's primary election law. The court quoted from State v. Nichols, 50 Wash. 508, 97 P. 728 (1908), to the effect that:

> * * * [W]e do not think the sections of the constitution providing the qualifications of electors applicable to the primary election provided for by this statute. It is not the purpose of the primary election law to elect officers. The purpose is to select candidates for office, to be voted for at the general election. Being so, the qualifications of electors provided by the constitution for the general election can have no application thereto. * * * Riter, supra, at 426.

In Riter, supra, the court noted that the purpose of the primary law was to preserve the integrity of political parties. Riter, supra, at 418. That being the case, the court later noted that:

> Any reasonable test of party affiliation may be required by the legislature of those who desire to participate in primary elections of the various parties. Riter, supra, at 428.

In this case, the test required by the Legislature is found in NRS 293.177. A candidate for a party primary must be a registered voter of that party. A state may impose reasonable requirements designed to insure that persons listed as party candidates on primary ballots are members of that political party. Ray v. Blair, 343 U.S. 214 (1952). This, then, is the purpose of NRS 293.177—to furnish proof to party voters in a party primary that candidates in the party primary actually belong to the party. The Legislature deemed this to be a reasonable test of party integrity in such primary elections.

CONCLUSION—QUESTION ONE

It is the advice of this office that NRS 293.177 is a valid law and, therefore, it is necessary that a candidate in a party primary must be a registered voter of that party. Having answered Question One in this manner, it is unnecessary to answer the second part of the question.

QUESTION TWO

In view of the provisions of Article 15, Section 3 of the Nevada Constitution, is it permissible to require that a qualified elector should also be a *registered voter* in order to be a candidate in a *nonpartisan primary* election? If not, what proof should be required of a nonregistered elector who wishes to be a candidate that he is eligible?

ANALYSIS—QUESTION TWO

NRS 293.177 provides that for any candidate's name to appear in any primary election, he must file a declaration or acceptance of candidacy. NRS 293.177 also provides that the declaration or acceptance of candidacy to be used should be *substantially* the same as the declaration printed in the statute. The Nonpartisan Declaration of Candidacy adopted by the Secretary of State provides, in its pertinent parts:

> For the purpose of having my name placed on the official primary election ballot as a nonpartisan candidate for nomination for the office of ……., I, the undersigned ……., do solemnly swear (or affirm) * * * *that I am a registered voter of the election precinct in which I reside.* * * * (Italics added.)

As indicated earlier, Article 15, Section 3 of the Nevada Constitution merely states that a person should be a qualified elector in order to be eligible to an office in Nevada.

There is a difference between a party primary and a nonpartisan primary. The purpose of a party primary is to nominate the candidates of a political party. Riter v. Douglass, supra. The term "nonpartisan," however, means no partisanship; no regard to political affiliations. Reed v. State ex rel. Stewart, 76 Nev. 361, 354 P.2d 858 (1960); Bonner v. District Court, 122 Mont. 464, 206 P.2d 166 (1949). The purpose of nonpartisan primaries is not to nominate party candidates, but merely to limit the size of the ballot for the nonpartisan office at the general election. It has always been considered reasonable for a state to attempt to limit the size of a ballot at the general election so as to insure that the candidate elected at the general election represents a majority of the voters participating in the election. 26 Am.Jur.2d Elections, § 215.

Since the purpose of a nonpartisan primary is to limit the size of the nonpartisan ballot at the general election, the nonpartisan primary must be considered an integral part of the general election for the office itself. The nonpartisan primary, therefore, cannot be divorced from the general election as the Riter case, supra, does for party primaries. It is, instead, a part of the election for the office. Its is clearly shown by the Schur case, supra, in which a candidate attempted to file for the nonpartisan *primary* election.

The Nevada Supreme Court held, quoting Bergevin, supra:

> It is settled by the great weight of authority that the legislature has the power to enact reasonable provisions for the purpose of requiring persons who are electors, and who desire to vote, to show that they have the necessary qualifications; as by requiring registration. * * * Such provisions do not add to the qualifications required of electors. * * * In this case the appellant would have been eligible to the *office* of supervisor of the district for which he was elected if his name had not been on the great register. He could not have voted at the election, and thus would have been deprived of voting for himself, if he so desired; but, having the constitutional qualifications, he was eligible to the *office*. (Italics added.) Schur, supra, at 292.

The Nevada Supreme Court then ruled that the candidate, despite not being a registered voter in the township in which he was running for office, was eligible for the office. Schur, supra, at 298, 300.

As such, it is this office's opinion that a candidate in a nonpartisan primary, although he must be a qualified elector, need not be a registered voter.

Proof of a nonpartisan's eligibility for the primary election under these circumstances is the same as for proof of his eligibility for the general election—the declaration of candidacy. Compliance with the provisions of this document will establish prima facie proof that a candidate is a qualified elector. However, in the case of candidates for a nonpartisan primary election who are not registered voters, the sentence in the Declaration of Candidacy which reads: "* * * and that I am a registered voter of the Election Precinct in which I reside * * *," may be struck, in accordance with the Nevada Supreme Court's ruling in the Schur case.

CONCLUSION—QUESTION TWO

It is the advice of this office that a candidate in a nonpartisan primary election need not be a registered voter, although he must be a qualified elector. Proof of his eligibility as a qualified elector may be established on a prima facie basis by the Declaration of Candidacy, except that statements in the declaration that the candidate is a registered voter may be struck, when the candidate, in fact, is not a registered voter.

QUESTION THREE

Is NRS 293.176 constitutional?

ANALYSIS—QUESTION THREE

NRS 293.176 provides that:

> No person may be a candidate for a party nomination in any primary election if he has changed the designation of his political party affiliation on an official affidavit of registration in the State of Nevada or in any other state since September 1 prior to the closing filing date for such election.

The closing filing date for elections is the third Wednesday in July of the year in which the election is to be held. NRS 293.177. In effect, then, NRS 293.176 prohibits a change of party registration for approximately 10½ months prior to the closing filing date for a party primary election. Similar statutes have been enacted in other states and have been upheld in state courts as legitimate requirements to insure party loyalty and to prevent party raiding. Such laws prohibiting party candidates from changing party registration for periods of time from 6 months, 12 months, and even 2 years prior to a primary election have been upheld on the right of legislatures to enact reasonable tests of the sincerity of party candidates. Roberts v. Cleveland, 48 N.M. 226, 149 P.2d 120

(1944); Crowells v. Peterson, 118 So.2d 539 (Fla. 1960); Mairs v. Peters, 52 So.2d 793 (Fla. 1951); Bradley v. Myers, 46 P.2d 931 (Ore. 1970).

The federal courts have taken a similar stand. In Ohio, the legislature provided that a person could not become a party candidate if he voted in any other party's primary during the previous *4 years.* A federal court upheld the law, saying:

> The compelling State interest the Ohio Legislature seeks to protect by its contested statutes is the integrity of all political parties and membership therein. These Ohio statutes seek to prevent "raiding" of one party by members of another party and to preclude candidates from "* * * altering their political party affiliations for opportunistic reasons." [Cite omitted.] Protection of party membership uniformly applied to all parties cannot be characterized as "invidious discrimination." Lippitt v. Cipollone, 337 F.Supp. 1405, 1406 (1971).

This case was affirmed by the United States Supreme Court without an opinion. Lippitt v. Cipollone, 404 U.S. 1032 (1972).

In Storer v. Brown, 415 U.S. 724 (1974), the United States Supreme Court upheld a California law which prohibited a person from running as an independent candidate in the general election if he had been a registered voter with a political party at any time within 1 year prior to the immediately preceding primary election. The court held that the state had a compelling interest to prevent opportunists from destroying the vitality of a political party by drawing party voters away from the party by an independent candidacy.

The court also made reference to the fact that California law prohibited a person from being a party candidate if he were registered with another political party at any time within 1 year prior to the party primary. Although this law was not at issue in the case, the court noted the state's interest in such a law was the same as was upheld by the court in Rosario v. Rockefeller, 410 U.S. 752 (1973). Storer, supra, at 734.

In Rosario, the U.S. Supreme Court upheld a New York law that prohibited voters from voting in a party primary unless they were registered to vote for that party at least 11 months before the primary. The court stated that the law met a legitimate state interest—a prohibition of party raiding. Since "long range planning in politics is quite difficult," an 11 month prohibition against a change in party affiliation was regarded as a proper test of party sincerity. Rosario, supra, at 760.

The only reported Nevada case regarding NRS 293.176 is Long v. Swackhamer, 91 Nev. Advance Opinion 169, dated July 31, 1975. In that case, petitioner, a Republican, changed his party registration after the September 1, 1973, cutoff date to the Independent American Party. However, the Independent American Party did not become a qualified party for the purposes of the ballot until June 25, 1974. Accordingly, the Nevada Supreme Court held:

> We believe, and so hold, that NRS 293.176 has no application at all to a new political party coming into existence after September 1 of the preceding year.

On this narrow ground, petitioner Long was permitted to file for the ballot. The court, however, did not consider the validity of NRS 293.176 with regard to established parties.

It would appear, therefore, in view of the United States Supreme Court's affirmance of the Lippett case, supra, and its opinions in Storer, supra, and Rosario, supra, coupled with the presumption that statutes are valid, Viale v. Foley, 76 Nev. 149, 350 P.2d 721 (1960), that NRS 293.176 is constitutional.

It is true that this statute denies certain potential candidates from contending for a party nomination. A statutory scheme that absolutely denies a candidate a place on the ballot is unconstitutional. Williams v. Rhodes, 393 U.S. 23 (1968). Where a candidate is not absolutely precluded from the ballot, statutes which restrict him in other ways are not

unconstitutional if they serve a compelling state interest. Jenness v. Fortson, 403 U.S. 431 (1971); Lubin v. Panish, 415 U.S. 709 (1974).

In Nevada, a candidate denied the opportunity of appearing on a party primary ballot may, pursuant to NRS 293.200, appear on the general election ballot as an independent candidate.[3]

> The law is not mandatory in compelling candidates who may desire to get on the official ballot to submit themselves to the primary election. They have the privilege * * * of running independently if they desire. In the event they desire to submit themselves to the primary election, it is not unreasonable or unrighteous to make them comply with any reasonable test made by the legislature for the purpose of preserving the integrity of the party with which they desire to affiliate. * * * Riter, supra, at 433.

CONCLUSION—QUESTION THREE

It is the advice of this office that NRS 293.176 is constitutional, except it is not applicable to new political parties coming into existence after the September 1 date prior to the closing filing date for the next election.

QUESTION FOUR

Could a qualified elector, officially registered as a voter in a political party, and who wishes to run as a candidate under another party label, circumvent NRS 293.176 by simply requesting that his current affidavit of voter registration be *cancelled* and then, after a period of time, reregister as a member of the desired party in order to run in its primary?

ANALYSIS—QUESTION FOUR

NRS 293.176 applies to candidates who have "changed" their party registrations subsequent to the September 1 cutoff date. You have stated to this office that, ordinarily, a person "changes" his registration all at one time by filing an affidavit of registration with the county clerk or voter registrar indicating he has "changed" registration from one party to another. Your question, however, contemplates a person cancelling his previous registration, remaining unregistered with any party for a period of time, then registering with another party.

This question assumes that a candidate has a party affiliation subsequent to the September 1 cutoff date before he cancels that registration. By the terms of NRS 293.176, therefore, when he cancels his previous registration and, after a time, reregisters into a new party, he "has changed the designation of his political party affiliation" subsequent to the September 1 cutoff date. Whether he does this all at once by filing an affidavit of registration "changing" his registration or whether he first cancels his previous registration and then, after a period of time, registers with another party makes no difference in the result. By the terms of the law, he would be prohibited from running in his new party's primary election.

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[3]Prior to July 1, 1975, a person wishing to be an independent candidate was prohibited by NRS 293.200 from running as an independent if he was registered with a political party at any time subsequent to the primary election preceding the closing filing date for the next election. This provision was repealed by the 1975 Legislature. There is now no prohibition against a candidate changing his voter registration to independent at any time prior to the closing filing date for the next election and running as an independent candidate pursuant to NRS 293.200.

The intent of NRS 293.176 is to preserve party integrity by preventing political opportunism or interparty raiding. To permit so transparent an attempt as cancelling a previous registration after the September 1 cutoff date and reregistering into another party at a later date as the basis for allowing a candidate to run in the other party's primary, would be to patently frustrate the legislative intent of NRS 293.176. Statutes and words therein should be construed so as to avoid absurd results. Western Pacific R.R. v. State, 69 Nev. 66, 241 P.2d 846 (1952). Every statute must be construed in light of its purpose. Berney v. Alexander, 42 Nev. 423, 178 P. 978 (1919).

CONCLUSION—QUESTION FOUR

It is the advice of this office that a candidate may not, after the September 1 date prior to the closing filing date for the next election, circumvent NRS 293.176 by cancelling his voter registration in one party and, after a period of time, reregistering as a voter in another party.

Respectfully submitted,

ROBERT LIST, *Attorney General*

By DONALD KLASIC, *Deputy Attorney General*

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198 NRS 294A.010 and 294A.020—The term "district," as used in NRS 294A.010 and 294A.020, means not only multicounty districts, but also intracounty districts such as general improvement districts, school trustee districts, hospital trustee districts, etc.

CARSON CITY, January 28, 1976

THE HONORABLE WM. D. SWACKHAMER, *Secretary of State*, The Capitol, Carson City, Nevada 89710

DEAR MR. SWACKHAMER:

You have requested advice regarding the campaign contribution and expenditure reporting requirements of Chapter 294A of Nevada Revised Statutes.

QUESTION

Does the term "district," as used in NRS 294A.010 and 294A.020, refer only to multicounty district offices, such as legislators or district judges, or does it also refer to intracounty district offices, such as general improvement districts, school trustee districts, hospital trustee districts, etc.?

ANALYSIS

NRS 294A.010 states that:

> Every candidate for state, district, county, city or township office at a primary or general election shall, within 15 days after the primary election and 30 days after the general election, report the total amount of all of his campaign contributions to the secretary of state on affidavit forms to be designed and provided by the secretary of state.