

We would further note that such a requirement, which is acquiesced in by a victim of sexual assault, could potentially raise an issue at the trial of the alleged offender that the county “bought” the victim’s testimony in exchange for medical care and psychological counseling. Although we would hope that any judge or jury would see the absurdity of such an argument, such a requirement seems to allow the introduction into the trial of a diverting element for which there is little, if any, real justification. In cases of sexual assault, testimony of the victim, who is often the only eyewitness to the crime, may be of considerable importance to a successful prosecution, and it appears to us unwise for the county to voluntarily created a situation which in any way may tend to bring into question the victim’s credibility as a witness.

Your concern with the possible implications of Disciplinary Rule 7-109 of the Code of Professional Responsibility is well taken. Although we have found no reported decision which conclusively establishes that such payments for medical care and psychological counseling by the county, in which the prosecutor is an officer or employee, would constitute a violation of this disciplinary rule, the need for lawyers, both public and private, to avoid even the appearance of impropriety is a well established legal maxim. To the extent that a requirement for compulsory testimony on behalf of the district attorney in exchange for free county medical care and psychological counseling may be said to create the appearance of impropriety, we would not recommend such a requirement even if we thought the commissioners otherwise possessed the authority to adopt it.

CONCLUSION—QUESTION THREE

A board of county commissioners may *not*, as a condition to receiving medical treatment of psychological counseling under either [NRS 217.300](#) or 217.310, require a victim of sexual assault to agree in advance to testify at any criminal trial or to otherwise continue to cooperate with law enforcement officials in their investigation and prosecution of the offender.

Respectfully submitted,

RICHARD H. BRYAN
Attorney General

By: William E. Isaeff
Deputy Attorney General

OPINION NO. 80-4 Elections: Political Party or Independent Candidate Qualification, Initiative and Referendum Measures and Recall Elections—Under [NRS 293.128](#), [293.200](#), 295.015, 295.045, 295.095, 295.140, 295.205 and 306.020, voters who are presently registered in Nevada may sign petitions for political party and independent candidate qualification, initiative and referendum measures and recall elections, regardless of whether or not these persons actually voted in the last preceding general election.

Carson City, February 26, 1980

The Honorable Wm. D. Swackhamer, Secretary of State, Capitol Complex, Carson City, Nevada
89710

Attention: David L. Howard, Chief Deputy Secretary of State

Dear Mr. Swackhamer:

You have requested advice concerning who may be entitled to sign petitions under Nevada law pertaining to qualifying political parties and independent candidates for the ballot, placing initiative and referendum measures on the ballot and holding recall elections.

FACTS

[NRS 293.128](#), [293.200](#), 295.015, 295.045, 295.095, 295.140, 295.205 and 306.020 contain the statutory requirements for submitting petitions for the purposes of qualifying political parties and independent candidates on the ballot, placing initiative and referendum measures on the ballot and for initiating recall elections. Every electoral year, your office is the recipient of numerous inquiries as to whether those statutes must be interpreted to limit persons signing such petitions to only those registered voters who actually voted at the last preceding general election.

QUESTION

Are only those persons who actually voted by the last preceding general election permitted to sign petitions under [NRS 293.128](#), [293.200](#), 295.015, 295.045, 295.095, 295.140, 295.205 and 306.020?

ANALYSIS

The election laws, as is provided by both statutory and case law, are to be interpreted liberally with a view to promoting the purpose for which they were enacted. The statutes providing for petitions to qualify political parties or independent candidates, to introduce initiative or referendum measures, or to hold recall elections are all part of Title 54 of the Nevada Revised Statutes. [NRS 293.127](#) provides:

This Title shall be liberally construed to the end that all electors shall have an opportunity to participate in elections and that the real will of the electors may not be defeated by any informality or by failure substantially to comply with the provisions of this Title with respect to the giving of any notice or the conducting or an election or certifying the results thereof.

Thus, courts have liberally construed requirements for qualifying political parties on the ballot, cf. *Long v. Swackhamer*, [91 Nev. 498](#), 500-501, 538 P.2d 587 (1975), qualifying independent candidates on the ballot, *Springer v. Mount*, [86 Nev. 806](#), 809, 477 P.2d 159 (1970), placing initiative and referendum measures on the ballot, *Colorado Project—Common Cause v. Anderson*, 495 P.2d 220, 221 (Colo. 1972), and for holding recall elections, *Cleland v. District Court*, [92 Nev. 454](#), 455-456, 552 P.2d 488 (1976). Such a policy, of course, is still subject to the general rule that when the language of a statute is plain, its intention must be found in such language only. *Cirac v. Lander County*, 95 Nev., Advance Opinion 191 (November 2, 1979). Thus, for example, the procedures specifically outlined for authenticating signatures on an initiative petition must be strictly adhered to. *Lundberg v. Koontz*, [82 Nev. 360](#), 366, 418 P.2d 808 (1966).

Turning our attention to the statutes at issue, [NRS 293.128](#) and [293.200](#) provide in pertinent part as follows:

[NRS 293.128](#). To qualify as a political party any organization shall * * * file a petition * * * signed by a *number of registered voters* equal to or more than 5 percent of the entire number of votes cast at the last preceding general election for Representative in Congress * * *. (Italics added.)

[NRS 293.200](#). 1. Independent candidates for partisan office shall qualify by filing * * * a certificate of candidacy signed by a *number of registered voters* equal to at least 5 percent of the total number of ballots cast in the state or in the county, district or municipality electing such officer at the last preceding general election * * *. (Italics added.)

In the opinion of this office, the reference in each statute to the words “a number of registered voters” when referring to who may sign such petitions clearly does not limit the class of persons who are eligible to sign such petitions to voters who voted in the immediately preceding general election. Any presently registered voter, regardless of whether he or she voted in the last preceding general election or not, is eligible to sign such petitions. Reference to the last preceding general election is clearly made for the sole purpose of determining the minimum number of presently registered voters who must sign such petitions for the purpose of qualifying political parties or independent candidates.

The above two statutes present little problem in reaching this conclusion because of the unambiguous nature of the language. However, with respect to the requirements for a qualifying petition in connection with initiative and referendum measures and recall elections, the relevant statutes contain different wording:

[NRS 295.015](#). An initiative petition * * * shall be proposed by
a number of registered voters equal to 10 percent or more of the
number of voters who voted at the last preceding general election in not
less than 75 percent of the counties in the state, but the total number of registered voters signing
the initiative petition shall be equal to 10
percent or more of *the voters who voted in the entire state at the last preceding
general election*. (Italics added.)

[NRS 295.045](#). Whenever *a number of registered voters* of this state equal to 10 percent or more of *the number of voters who voted at the last preceding general election* express their wish [for a referendum election] * * *. (Italics added.)

[NRS 295.095](#). 2. Initiative petitions [for county ordinances] must be signed by *a number of registered voters* of the county equal to 15 percent or more of *the number of voters who voted at the last preceding general election* in the county.

3. Referendum petitions [on county ordinances] must be signed by *a number of registered voters* of the county equal to 10 percent or more of *the number of voters who voted at the last preceding general election* in the county. (Italics added.)

[NRS 295.140](#). Whenever 10 percent or more of *the registered voters* of the county equal to 10 percent or more of *the number of voters who voted at the last preceding election*, shall express their wish that any act or resolution enacted by the legislature, and pertaining to such county only [be subject to a referendum] * * *. (Italics added.)

[NRS 295.205](#). 2. Initiative petitions [for city ordinances] must be signed by *a number of registered voters* of the city equal to 15 percent or more of *the number of voters who voted at the last preceding municipal election*.

3. Referendum petitions [on city ordinances] must be signed by *a number of registered voters* of the city equal to 10 percent or more of *the number of voters who voted at the last preceding municipal election*. (Italics added.)

[NRS 306.020](#). For the purpose of recalling any public officer, there may be filed * * * a petition signed by *a number of registered voters* not less than 25 percent of *the number who actually voted in the election by which the officer sought to be recalled was elected to his office*. (Italics added.)

Experience has shown by the number of inquiries to the Secretary of State regarding these laws that the language of the laws, specifically the reference to the number of voters who voted at the last election, has engendered confusion in the minds of persons wishing to circulate such petitions as to who is eligible to sign them. The confusion is perhaps created by the impression that only those registered voters who voted at the last statutorily relevant election may sign such petitions.

It is the opinion of this office, however, that the statutes' references to the number of voters who voted at the last election merely establishes a frame of reference for determining the minimum number of presently registered voters who need to sign such petitions to make them viable. It is the reference in the statutes to "a number of registered voters" (or "the registered voters" in the case of [NRS 295.140](#)) which establishes the eligibility of persons to sign these petitions. These words show an unqualified eligibility for all presently registered voters to sign such petitions.

This interpretation is consistent not only with the actual wording of the statutes, but with the legislative and judicial policy that election statutes should be liberally construed whenever legally possible. Thus, with respect to a recall statute that fixed the minimum number of signatures on a recall petition to 30 percent of the qualified electors who voted at the last election, the North Dakota Supreme Court held that its sole purpose was to prescribe the minimum number of signers necessary to recall an official and was not a limitation on who can sign such a petition. *State v. Baillie*, 245 N.W. 466, 468 (N.D. 1932). The court went on to point out that after an official was elected, new electors may come of age or become residents of the state and it certainly would not be the intent of the law to disqualify such persons from signing such petitions. *State v. Baillie*, supra at 468.

This rationale is as true in considering petitions for initiative and referendum measures as it is for recall petitions. A recall statute should be liberally construed with a view to promoting the purpose for which it was enacted. *Cleland v. District Court*, supra at 455-456. Initiative provisions should be liberally construed to effectuate their purpose and to facilitate their exercise by the voters. *Colorado Project—Common Cause v. Anderson*, supra at 221.

CONCLUSION

It is the opinion of this office that under [NRS 293.128](#), [293.200](#), 295.015, 295.045, 295.095, 295.140, 295.205 and 306.020, any voter who is presently registered in Nevada may sign petitions for political party and independent candidate qualification, initiative and referendum measures and recall elections.

Respectfully submitted,

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