

under [NRS 283.440](#).

Finally, our examination of the relevant opinions from the Supreme Court of Nevada interpreting [NRS 283.440](#) and its predecessors has failed to show any instance in which a district attorney ever acted as defense counsel in such a proceeding. Thus, there is not even any historical precedent for the district attorney to play such a role in summary removal cases.

CONCLUSION

The district attorney is not required to provide a defense for a county public officer against whom summary removal proceedings have been filed under the provisions of [NRS 283.440](#), nor would it be proper for him to attempt to do so.

Sincerely,

BRIAN MCKAY, *Attorney General*

By WILLIAM E. ISAEFF, *Chief Deputy Attorney General*

OPINION NO. 84-4 Elections: The office of an elected county officer who resigns after the close of filing for declarations or acceptances of candidacy must appear on the ballot of the next ensuing biennial election. Candidates are to be designated in accord with the procedures contained in Nev. Rev. Stat. § 293.165.

CARSON CITY, February 6, 1984

WILLIAM D. SWACKHAMER, *Secretary of State*, Capitol Building, Carson City, Nevada 89710

DEAR MR. SWACKHAMER:

You have requested our opinion whether the resignation of an elected county officer after the closing date for filing declarations of candidacy precludes that office from appearing on the general election ballot.

QUESTIONS

If an elected county officer resigns after July 3, 1984, does that office appear on the ballot of the 1984 general election to fill the unexpired two-year portion of the term? If the office must appear on the ballot of the 1984 general election, what is the procedure for choosing the candidates for that office that are to appear on the ballot?

ANALYSIS

Nev. Rev. Stat. § 293.177(1) specifies in part that no candidate's name may be printed on the ballot unless the candidate has filed a declaration or acceptance of candidacy prior to 5:00 p.m. of the first Wednesday in July in the year the election is to be held. Since the first Wednesday in July of 1984 is a legal holiday, Nev. Rev. Stat. § 293.1275 requires that the filing be performed prior to 5:00 p.m. on July 3, 1984. You have received information which indicates that two elected county officers in one of the counties may resign from their offices after July 3, 1984. These offices would then be filled by appointment. However, your concern is do the appointments merely extend until the 1st Monday of January after the next ensuing biennial

election or do the appointees serve out the entire unexpired term of the officer who resigned?

When a vacancy occurs in any county office, except the offices of district judge and county commissioner, the board of county commissioners shall appoint a suitable person to fill the vacancy "until the 1st Monday of January after the next ensuing biennial election." Nev. Rev. Stat. § 245.170. Any vacancy in the office of district judge is filled through appointment made by the governor which expires at the next general election and qualification of the elected successor. The elected successor serves the balance of the unexpired term. Nev. Rev. Stat. § 3.080. Any vacancy in the office of county commissioner is filled through appointment made by the governor which extends to "12 p.m. the day preceding the 1st Monday of January next following the next general election." Nev. Rev. Stat. § 244.040. This concept of appointment until the next ensuing biennial election received a thorough analysis in Op. Att'y Gen. No. 179 (September 20, 1960).

In the opinion just cited, we reasoned that statutes like those just cited in the preceding paragraph have as their purpose furnishing to the electorate the opportunity to fill a vacated county office at the earliest convenient time. Therefore, in that opinion, we concluded that the appointment filling the vacancy then existing in the office of district attorney extended only to the next biennial election, at which time the voters would determine who shall fill the unexpired term of that office. This conclusion was based on a set of facts in which the former district attorney resigned before the actual holding of the primary election but after the last day permitted for filing. The factual circumstance in that opinion is the same as your present inquiry.

In Op. Att'y Gen. No. 179 (September 20, 1960), we concluded that the resignation of the incumbent district attorney before the conduct of the primary election but after the last day permitted for filing was the legal equivalent of a vacancy in party nomination after the holding of the primary election. This situation required the application of Nev. Rev. Stat. § 294.300 which basically provided that a vacancy in a party nomination occurring after the holding of any primary was to be filled by the appropriate central committee of the nominee's political party. Nev. Rev. Stat. § 294.300 has since been repealed and replaced by Nev. Rev. State. § 293.165 which provides the same candidate designation procedure.

CONCLUSIONS

If an elected county officer resigns after July 3, 1984, that office must appear on the ballot of the 1984 general election to fill the unexpired two-year portion of the term.

Candidates for that office who are to appear on the ballot are to be designated in accord with the procedures contained in Nev. Rev. Stat. § 293.165.

Sincerely,

BRIAN MCKAY, *Attorney General*

By SCOTT W. DOYLE, *Deputy Attorney General*

OPINION NO. 84-5—School Districts: A district employee, represented by a bargaining agent who has commenced negotiations pursuant to [NRS 288.180](#) on the employee's behalf, does not establish a contract of employment between the district and the employee upon the employee's execution of the notification of intent to accept reemployment required by [NRS 391.3196\(4\)](#).

CARSON CITY, March 7, 1984