

CONCLUSION

Nev. Admin. Code § 295.010 is *not* in conflict with Nev. [Const. art. 19, § 2](#) or Nev. Rev. Stat. §§ 295.025(1), 295.035(1), 295.045(2), 295.056, 295.057, 295.058 and 295.059. The registrar of voters or county clerk should not accept the submission of any statewide petition for initiative or referendum which is not presented in accord with the time limits established by Nev. Admin. Code § 295.010.

Sincerely,

BRIAN MCKAY, *Attorney General*

By SCOTT W. DOYLE, *Chief Deputy Attorney General,*
Civil Division

OPINION NO. 84-8 Elections: Candidates for county office of public administrator are required to pay \$40.00 filing fee. Op. Att’y Gen. No. 132 (July 25, 1922) is overruled.

CARSON CITY, April 19, 1984

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

DEAR MR. SWACKHAMER:

You have requested our opinion concerning filing fees for candidates for public office.

QUESTION

Is a filing fee required under Nev. Rev. Stat. § 293.193 for the county office of public administrator? In responding to your inquiry you have asked us to limit our response by excluding from our analysis the county public administrator offices subject to the provisions of Nev. Rev. Stat. §§ 253.010(3), 253.041, 253.043 and 253.050(2).

ANALYSIS

Nev. Rev. Stat. § 293.193(2) provides:

No filing fee shall be required from a candidate for an office the holder of which receives no compensation.

You indicate that the office of public administrator in Churchill County will appear on the primary and general election ballots of 1984 due to the resignation of the office holder elected in 1982. Historically, Churchill County has not required a filing fee for the office of public administrator. Apparently this practice stems from the fact that in Churchill County the public administrator is compensated pursuant to Nev. Rev. Stat. § 253.050(1). This statutory provision provides that public administrators are entitled to be paid as other administrators or executors are paid for the administration of the estates of deceased persons. The only exceptions to this rule are those public administrators compensated pursuant to Nev. Rev. Stat. §§ 253.043 and

253.050(2).

In addition, you indicate that Op. Att’y Gen. No. 132 (July 25, 1922) is supportive of the county’s practice of not charging a filing fee to candidates for this office. In that opinion we stated that the holder of the county office of public administrator receives no compensation whatever as public administrator. The office merely qualifies him to become administrator of certain estates, and for his services as administrator of such estates he is compensated under general law on a parity with other administrators—not as public administrator, but as administrator of such estates. Therefore, we concluded that the office holder in this circumstance was not compensated for holding the office and should not be required to pay a filing fee pursuant to a prior statutory exemption similar to Nev. Rev. Stat. § 293.193(2). The interrelationship of Nev. Rev. Stat. §§ 253.050(1) and 293.193(2), when coupled with the interpretation contained in Op. Att’y Gen. No. 132 (July 25, 1922), is the basis for Churchill County’s practice of not requiring a filing fee from candidates for the office of public administrator.

Nev. Rev. Stat. § 293.193(1) provides in pertinent part that the filing fee for the filing of a declaration or acceptance of candidacy for any county office is \$40.00. You indicate that in Washoe County, candidates for the office of public administrator are required to pay the \$40.00 filing fee specified in Nev. Rev. Stat. § 293.193(1). The requirement of paying the filing fee is imposed despite the fact that the office holder will be compensated pursuant to Nev. Rev. Stat. § 253.050(1). This is the same method of compensation used for the public administrator in Churchill County. You have sought our advice as to which county’s interpretation is correct.

In most instances, the compensation of public officers takes the form of a salary. A salary is generally characterized as a fixed compensation for services payable for a specified period of time. However, salary is not the only method by which public officers may be compensated. In addition to salary, public officers may be compensated by their receipt of fees, perquisites or commissions. All forms of compensation for public officers just discussed must find their authorization in some legal authority such as a constitutional or statutory provision. *See State of Nevada ex rel. Beck v. Washoe County*, [14 Nev. 67](#), 70 (1879).

Although our research indicates no direct holding by the Supreme Court of the State of Nevada that fees are a form of compensation for public officers, the concept of compensating public officers in this manner is discussed in at least three different opinions by our state supreme court which are contemporaneous to our 1922 opinion and characterize an officer’s receipt of fees as being compensation.

In *State ex rel. Jennett v. Stevens*, [34 Nev. 128](#), 116 P. 601 (1911), the court was concerned with the issue of a district judge collecting fees in his capacity as a townsite trustee, which fees were characterized by the court as being compensation, in addition to the compensation received as a district judge. The court pointed out that the duties of a townsite trustee were imposed on the judge by virtue of his holding the office of district judge. Since the duties of trustee were separate from this individual’s duties as judge, the district judge was entitled to receive the statutorily prescribed fees as compensation for services rendered in his capacity as trustee. *State ex rel. Jennett v. Stevens, supra*, [34 Nev.](#) at 143.

In *Wolf v. Humboldt County*, [36 Nev. 26](#), 131 P. 964 (1913), the court was concerned with the issue of whether a constable’s acceptance of partial payment on his claim for fees constituted an accord and satisfaction which barred his subsequent lawsuit against the county for the remaining unpaid fees. In deciding this issue, the court took notice of the concept that a fee payable to a public officer is remuneration to that official for performance of the specific official act for which the fee is claimed. *Wolf v. Humboldt County, supra*, [36 Nev.](#) at 33.

In *Clover Valley Land & Stock Co. v. Lamb*, [43 Nev. 375](#), 187 P. 723 (1920), the court decided the question of whether a county sheriff was entitled to a commission pursuant to the sheriff’s fee act for the sale of realty pursuant to a court order of foreclosure or whether the statutory commission is payable only when the sale is pursuant to a levy and execution. The

court decided that the commission was payable in the latter circumstance only. The rationale for this decision was that an officer acting under court order incurs no liability if the order is strictly obeyed. On the other hand, the same officer is liable for the consequences of an illegal levy. The court concluded that the legislature probably recognized this distinction and chose to make a commission payable to the sheriff on account of the liability to which the sheriff is exposed when realty is sold by that official pursuant to levy and sale. *Clover Valley Land & Stock Co. v. Lamb*, *supra*, 43 Nev. at 383-384. It must be noted that in this third opinion, like the preceding two, at least part of the court's rationale in reaching its decision is premised on its recognition that the receipt of fees by a public officer is to be treated as a method of compensating that official for the performance of official duties.

Nev. [Const. art. 4, § 32](#) characterizes the county office of public administrator as being one for which the legislature is required to fix their compensation. The legislature has done that through the enactment of Nev. Rev. Stat. §§ 253.043 and 253.050.

Consequently, we believe the better reasoned approach is to recognize that the concept of compensation for public officers is not limited to their receipt of fixed salaries, but can include payment by their retention of fees, perquisites or commissions. Therefore, the fact that a particular county public administrator receives fees pursuant to Nev. Rev. Stat. § 253.050(1) rather than a fixed salary pursuant to Nev. Rev. Stat. § 253.043 does not make that office one for which no compensation is received. The public administrator may receive fees from individual estates pursuant to Nev. Rev. Stat. § 253.050(1). However, these fees are received for the discharge of the official duties specified in Nev. Rev. Stat. § 253.040. To the extent that Op. Att'y Gen. No. 132 (July 25, 1922) opines that the county office of public administrator is an uncompensated office and entitled to be exempted from the filing fee requirement contained in a statute similar to Nev. Rev. Stat. § 293.193(1) it is incorrect and is overruled.

CONCLUSION

A \$40.00 filing fee payable pursuant to Nev. Rev. Stat. § 293.193(1) is required from any candidate for the county office of public administrator where the officer is to be compensated in accord with Nev. Rev. Stat. § 253.050(1). To the extent of Op. Att'y Gen. No. 132 (July 25, 1922) is inconsistent with this opinion, it is overruled.

Sincerely,

Brian McKay, *Attorney General*

By Scott W. Doyle, *Chief Deputy Attorney General,*
Civil Division

OPINION NO. 84-9 Constitutional Law—Evidence—Criminal Procedure: Evidentiary rule permitting recoupment of costs for expert testimony from convicted offender is constitutional. The Nevada rules of evidence may constitutionally permit the courts to impose the costs of expert testimony at a hearing or trial where the nonindigent convicted defendant objects to admission of the expert witness' affidavit regarding intoxicant analysis in driving under influence prosecutions. Nev. Rev. Stat. § 50.325 (1983).

CARSON CITY, April 23, 1984

THE HONORABLE JAMES E. WILSON, JR., *District Attorney of Elko County*, Elko County